



Comprehensive Study

This document was prepared
in the framework of flagship project number
KÖFOP-2.2.6-VEKOP-18-2019-00001,
entitled

Mapping Freedom of Information Practices
and Enhancing
their Effectiveness in Hungary

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Client:

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Date:

30 September 2022.

SZÉCHENYI 2020



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BEFEKTETÉS A JÖVŐBE

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2 THE AIM OF THE COMPREHENSIVE STUDY AND THE PRESENTATION OF THE PROJECT

2.1 THE PURPOSE AND STRUCTURE OF THE DOCUMENT

The aim of this comprehensive study is to summarize the activities and results of the KÖFOP-2.2.6-VEKOP-18-2019-00001 priority project "*Mapping Domestic Freedom of Information Practices and Enhancing their Effectiveness*" (hereinafter: the Project) in a clear and logically structured document. The study is also of particular importance because the Project is very complex due to the many interrelated activities carried out in its framework.

Following the technical chapters, the document presents the Project in the following structure:

- the current chapter describes the aim of the Project, the actors involved in its implementation, the activities carried out, and their context;
- chapters 4 to 7, using a coherent set of criteria, present the four studies used, the research methods, the results in detail, and the main recommendations based on them;
- chapter 8 contains the recommendations and guidelines and all the other activities carried out in the framework of the Project that have supported the successful implementation of the research.

2.2 THE AIM OF THE PROJECT, ACTIVITIES AND ACTORS

2.2.1 The Aim of the Project

The National Authority for Data Protection and Freedom of Information (hereinafter: NAIH or the Authority) is responsible for the protection of personal data, as well as for monitoring and promoting the right of access to data of public interest and data public on grounds of public interest.

At the end of 2018, the Authority had the opportunity to become a beneficiary of a long-needed project under the Development of Public Administration and Public Services Operational Programme (hereinafter: KÖFOP, OPENOP), specifically aimed at exploring the situation of freedom of information in Hungary, and thus the preparatory phase of the project entitled "*Mapping Freedom of Information Practices and Enhancing their Effectiveness in Hungary*" was launched in early 2019. The Authority's aim in implementing the project was to **conduct a comprehensive, science-based mapping of the status of freedom of information as a fundamental constitutional right in Hungary**. The Project was implemented within Priority 2 of KÖFOP, contributing to the fulfilment of its objective of strengthening "*service approach and ethical operation*" and its specific objective of "*improving the transparency of administrative processes*".

In the context of the Project's objectives, it is important to note that **freedom of information is presented as a public service**—in line with the logic below:

- As per the broadest definition of public service, public services include all services provided by the state to citizens as legal entities, including legislation, the administration of justice, and law enforcement.
- In a narrower sense, a public service is any service, whether by the state or private persons, that provides benefits to a wide range of residents, and is not construed as a unilateral act of the state.
- In everyday usage, any service that serves the common interest of the people, provides for their continuous needs, and a state organ or a local government is responsible for the operation and ensuring of which.

Freedom of information is a fundamental constitutional right under the Fundamental Law of Hungary.

Understanding the provision of public data as a public service fits in well with the tendency since the mid-nineteenth century to describe the expanding service-organising tasks of public administration in both human and infrastructural public services in terms of “service administration” (Forsthoﬀ). Ensuring freedom of information is not necessarily linked to the “exercise of power” by the state.

As stated above, the specific objective of the Project is to **examine the practical implementation of the obligation of publication** under domestic law and to make recommendations to legislators and data controllers based on the basis of domestic and international experience, as follows:

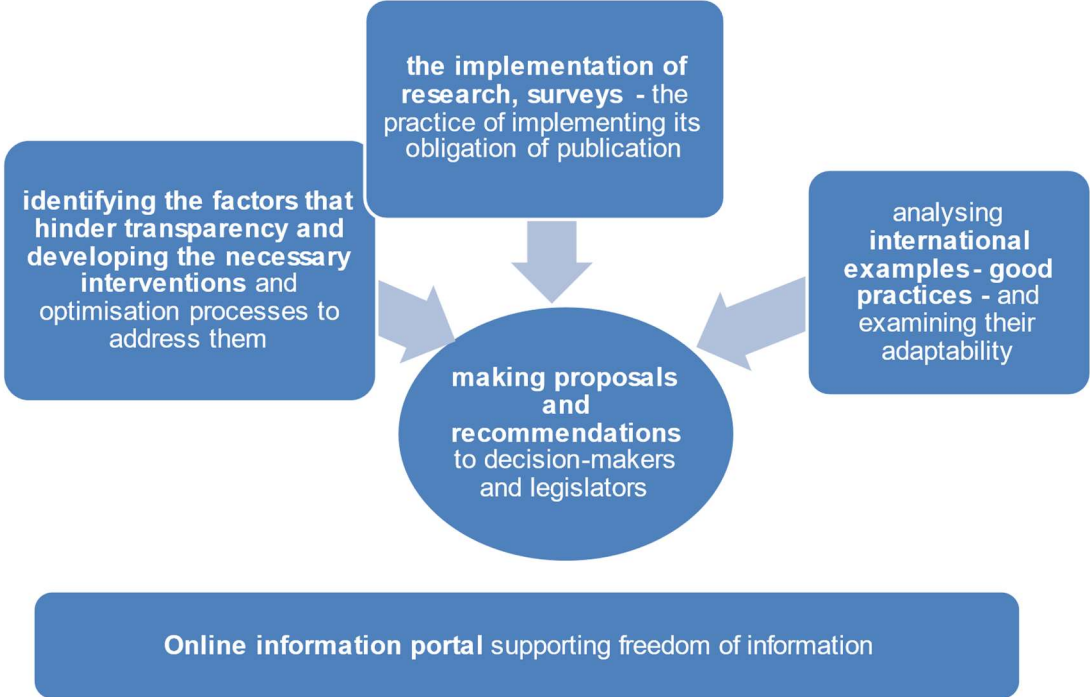
- conducting research and surveys to examine the publication practices of individual respondents, the practices related to the fulfilment of requests for data of public interest and the general information provision practices related to the public duty in question;
- as a result of the research, to identify problems of efficiency or other problems of law application and of potential barriers to compliance and transparency; moreover, to develop interventions and optimisation processes to address them;
- to process international examples—good practices—and to examine their adaptability;
- to develop a concept for an online information interface;
- to make proposals and recommendations for policy makers and legislators.

The following sub-chapter describes the activities and their context, and the organizational structure of the Project.

2.2.2 Activities of the Project

The summary figure below shows the logic and activities of the Project to achieve the objectives set:

Figure 1: Logical Structure of the Project



As a first step in the implementation process, **potential barriers to transparency** were identified and defined. This was followed by the **execution of research and surveys**, which examined the practices of individual data publishers in implementing their publication obligations, the practices related to the fulfilment of requests for access to data of public interest, and the general information practices related to the public duty at hand. Based on the results of the research, **recommendations and suggestions** were then made to decision-makers and legislators, and the necessary interventions, optimisation processes and tools were developed. The overview of the domestic situation can only be complete if it includes an examination of **international examples**, with the aim of assessing the extent to which the good practices identified can be adapted to the domestic context. International benchmark analysis accompanied the project throughout, the results of which are summarized in Chapter 8 of this study.

2.2.3 Structure of the Research

The project examined the domestic practice of freedom of information through **four applied researches**, which were accompanied by additional complementary activities.

The execution of the researches followed the same structure: the preparation of the **situation-analysis documents** was followed by the **preparation of the research plans**, which were the basis of executing the researches. Research reports were then prepared, then, after the **data collection and other input activities** related to the research had been carried out, **comprehensive research reports** were drawn up.

The technical content of each document was as follows:

- **Situation Analyses:** are for each research project the substantiating documents that set out the basis for the detailed research plan, a preliminary appraisal of the target group-specific situation and the questions raised to refine the research hypotheses, the research tasks and the research methods.
- **Research Plans:** include the specific hypotheses defined for each research project based on the Situation Analyses documents, the objectives of the research, the methodology to be used for the research—primary data collection, research methods and tools—and the precise timeschedule for the implementation of the research.
- **Research Reports:** give accounts of, following the implementation of the research, i.e. the data collection (carried out according to the methodological criteria and in the light of the research questions and hypotheses set out in the detailed Research Plans), the detailed results, justify (refute or support) the hypotheses formulated earlier, and include recommendations for optimisation of the research.

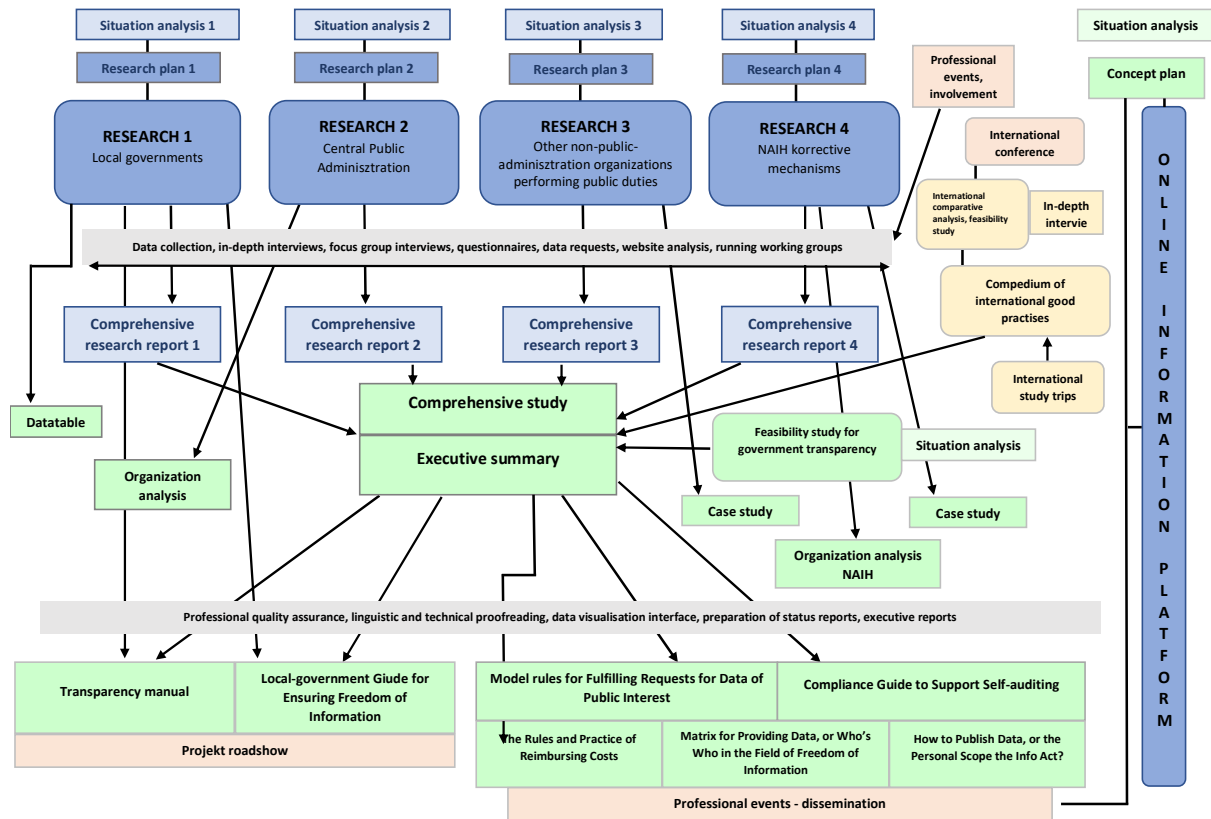
By way of the execution of the researches, thematic areas and points of intersection were identified in the process of enforcing freedom of information that deserve more attention and are suitable to be formulated on **in the form of concrete guidelines and recommendations**.

A project of this scale can only be truly useful and make a real difference if the results can also function **as useful tools**. This is the purpose of the **guidelines and recommendations produced**. In order to promote freedom of information on a broad scale and to provide access to all related knowledge and information in one place and on an easy-to-use interface, the project will create (by the end of December 2022) an **online information portal supporting freedom of information**.

All the results of the project are synthesized in two documents: one specifically addresses decision makers and legislators with concrete proposals along the lines of an optimization process, while the other is a comprehensive document, the present study, which aims to present the full spectrum of the Project's activities and results.

The figure below summarizes all the activities and results of the Project.

Figure 2: Project Activities and their Context

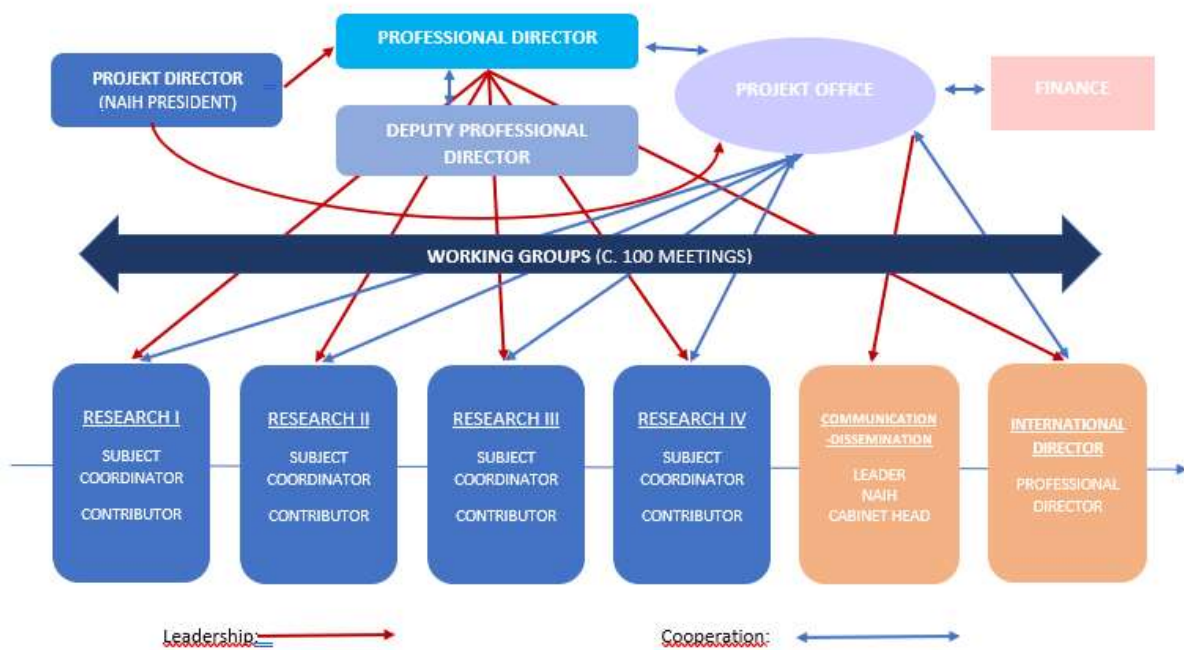


The Actors of the Project

The NAIH, as beneficiary, has the legal and technical expertise in the field that was required to plan and execute the project, but the complexity of the activities and the number of these activities, in particular the primary data collection, required additional expertise. Therefore, following an open procurement procedure, the NAIH awarded a contract for implementing the researches to the consortium of **EX ANTE Tanácsadó Iroda Kft. – HBH Stratégia és Fejlesztés Kft.** (hereinafter referred to as the Consortium).

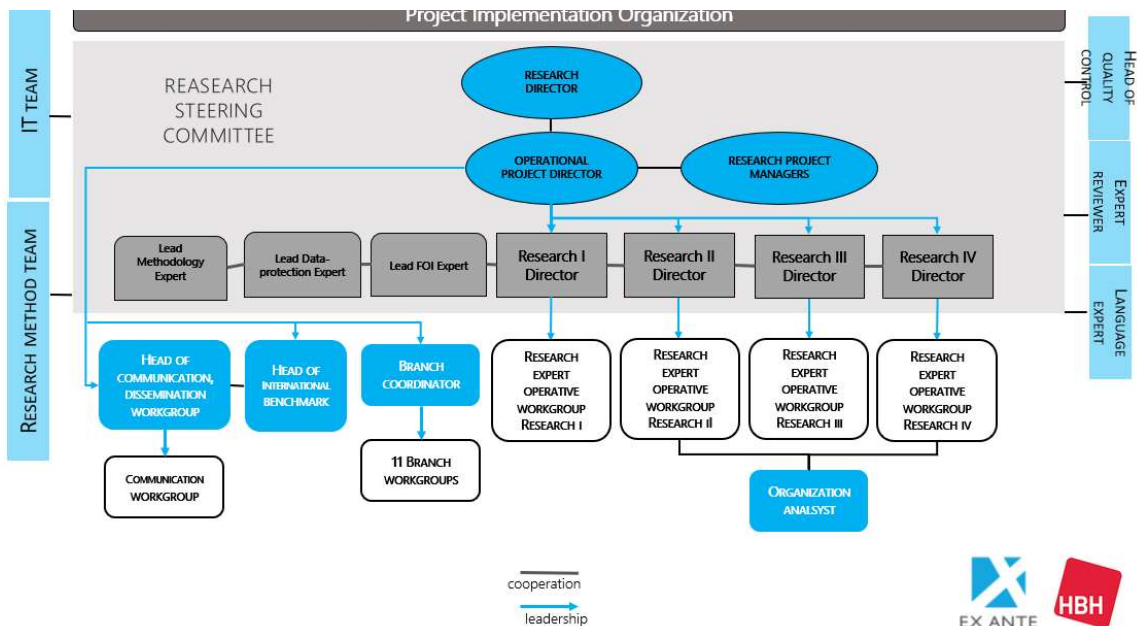
Due to its complexity, the implementation of the Project required coordinated professional management by the NAIH: therefore, the entire Freedom of Information Department worked on the professional management of the Project, and other departments delegated experts to carry out more specific tasks. The smooth cooperation with the Consortium and the support of the NAIH experts was ensured by a Project Office established specifically for this project.

1Figure 2: Organization Chart of the NAIH Project Organization



To ensure the highest possible level of professionalism, the consortium employed a team of nearly 60 experts, all of whom are outstanding in their fields, throughout the research process. It has also paid particular attention to ensuring that the experts contribute to the implementation of all activities in as complex a way as possible by sharing their expertise.

Figure 4: Project Organization Chart of the Consortium EX ANTE Kft. - HBH Kft



The project had the task and thus the purpose of **involving civil society organizations in its implementation**. Thus, the consortium involved a total of 64 NGOs in the implementation of the research, of which those associations and foundations were of particular relevance whose main activities are the promotion of democracy, of the transparency of the state and public life, of citizens'

Átlátszó

- provided access to the statistical database of public interest data requests via kimittud.atlatszo.hu for research purposes;
- through its contact system and forums, it was involved in engaging citizens and NGOs interested in freedom-of-information issues, as well as data requesting parties in primary data collection;
- shared its experiences and suggestions with researchers at professional events, workshops, and interviews;
- provided expert advice on the conceptual design for the government transparency platform;
- moderated sector working groups throughout the research process, and delegated members to working group meetings.

Environmental Management and Law Association (EMLA)

- leading technical events and working groups on requests to access environmental data;
- shared its experiences and suggestions with researchers in the context of research on corrective mechanisms at professional events, workshops and interviews;
- developed a guide to environmental data;
- moderated sector working groups and delegated members to working group meetings throughout the research process.

Society for Civil Liberties (TASZ)

- through its contact system and forums, it was involved in engaging citizens and NGOs interested in freedom-of-information issues, as well as requesting parties in primary data collection;
- moderated sector working groups throughout the research process and delegated members to working group meetings.

2.3 THE FOCI OF THE RESEARCHES CARRIED OUT

The foci of each research project were well defined during the planning of the project: they were both target-group-specific and defined according to different research foci. However, the four researches make up a single unit, and together they cover the whole spectrum of examining freedom of information and its entire range of data subjects. The target-group-specific researches examined the practices of implementing the obligation to publish data of public interest or data public on grounds of public interest under Act CXII of 2011 on the Freedom of Information (hereinafter: the Info Act).

Researches 1, 2 and 3 were target-group-specific:

- **Research 1** examined **the public access to local governments, and can be regarded as complete, insofar as** all 3197 local and county governments and 13 national-level national-minority self-governments were examined, and local- and county-level national-minority self-governments were also included by way of a sampling procedure.
- **Research 2** investigated **the public access to central public administration** as defined by Section 33 (2) (a) of the Info Act; thus independent regulatory organs; autonomous organs of state administration; national law enforcement organs and the Military National Security Service; the Government and the Prime Minister's Office; ministries; ministers without portfolio; government main offices; capital and county government offices were fully, while, with the exception of the subordinate bodies of the Hungarian State Treasury (MÁK) and the National Tax and Customs Administration (NAV), school districts, judiciary organs (courts, prosecutor's offices), central offices, hospitals, Hungarian diplomatic missions were included in the survey population by way of sampling procedures.
- **Research 3** examined the **public access¹ to non-public-administration organizations that do not belong to the target group of the previous two researches but manage public funds**

¹ Publicly owned companies; foundations with a state or local government background; public bodies; organisations subject to transparency obligations pursuant to Section 26 (3) of the Privacy Act. Organs or persons providing services the use of which is mandatory

and/or are organs performing public duties. The target group of this research included, for example, higher education institutions operating as public budgetary bodies, public companies, foundations with a public or municipal background, public bodies, and all organizations that use the central and local government budget or EU funding, or receive budget allocations or benefits; any entity having a financial or business relationship with any person involved in the management, possession, use, enjoyment, disposal or encumbrance of State and local government property, or in the acquisition of any right over such property, and which is generally a sub-system of general government.

The focus of Research 4, a comprehensive and horizontal research on the freedom-of-information issue, was on regulatory and corrective mechanisms—this research was **not target-group-specific**, but horizontal, as it analysed the issue from the regulatory-operational side, including the **analysis and formulation of specific cases, experiences, and lessons learned**.

In the course of the research, **all four researches took a holistic approach to freedom-of-information obligations and their enforcement practices, in line with the NAIH's preliminary professional guidelines**, which defined the obligations at three closely interrelated levels, taking into account the existing legal framework:

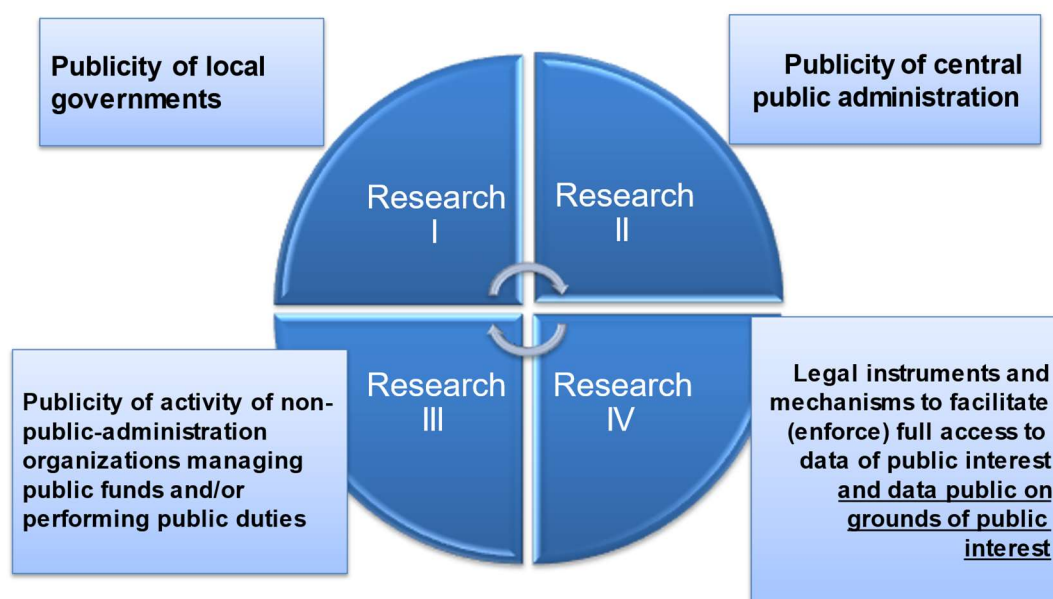
- **The first level** was constituted of the voluntary general provision of information by organizations performing public duties. This level was based, in line with the principle of good governance, on the transparent disclosure of data of public interest by the bodies subject to the publication obligation.
- **The second level** was constituted of the mandatory proactive publication by organs performing public duties, including general, specific and individual publication schemes as obligations.
- **The third level** was constituted of the fulfilment of individual data requests and the publication on request.

under law by contract with a state or local government organ (mandatory public service providers, such as waste transport, chimney sweeping, sewage disposal, piped water, and sewage services);

Entities or persons providing services that cannot be satisfied in any other way (monopoly providers such as postal, electricity, natural gas and electronic communications service providers);

Legal relations pursuant to the first sentence of Section 27 (3) and (3a) of the Privacy Act (and thereby legal entities), i.e. entities and institutions concerned in the use of the central and local government budget and EU subsidies, budget allocations and benefits; the management, possession, use and exploitation of state and local government property; disposing of it, encumbering it; legal entities having financial or business relations with any person involved in the acquisition of any right over such property, and which are generally part of the sub-system of public finances; higher education institutions operating as public budgetary bodies.

Figure 6: The Four Researches and their Foci



2.4 MEASUREMENT TOOLS AND METHODS

In order to ensure the comparability of the results of target-group-specific Researches 1, 2 and 3, not only the data collection methods and questions but also the content trajectory of presenting the results and the analysis logic used to evaluate the data collected were harmonized. As Research 4 was not target-group-specific but horizontal in nature, and examined the regulatory level, a different methodology was justified.

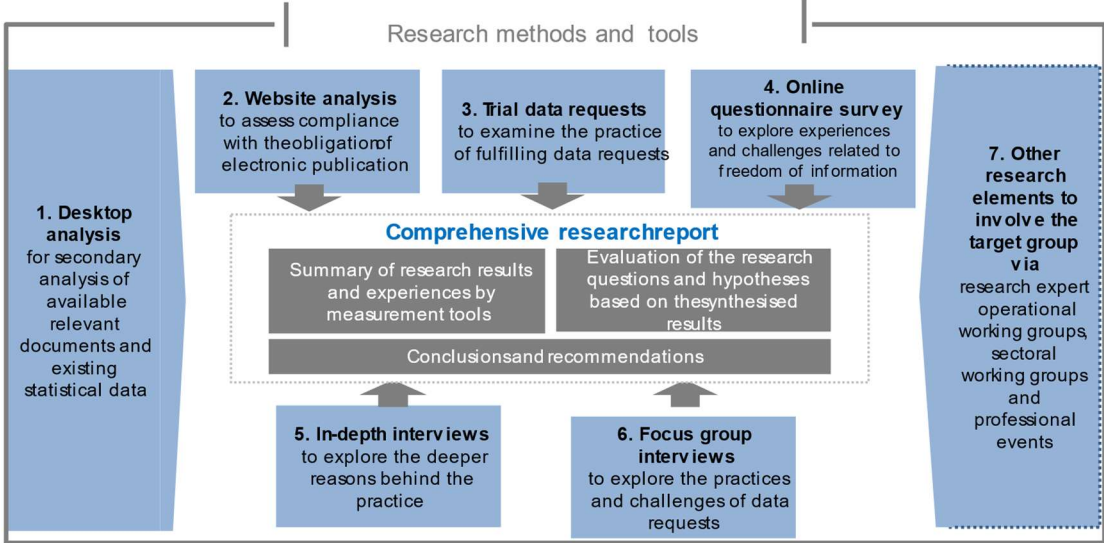
Measurement tools Used in Research 1, 2 and 3 were as follows:

- **Desktop analysis:** review and analysis of available relevant documents and statistics on target groups;
- **Website analysis:** website analyses were carried using a predefined minimum sample size, based on a set of standardized criteria established in advance according to professional criteria;
- **Trial data requests²:** by this means, recipients were given the same data request per target group with 5 or 6 (depending on the target group) pre-defined, easy-to-answer questions;
- **Online questionnaire survey:** included questions on experiences and challenges related to freedom of information for all target groups;
- **In-depth interview:** complementing experience gained via questionnaires, the method was also useful to explore deeper causes;
- **Focus-group interviews:** in the case of all research, these explored the practices and challenges related to data requests, involving both data controllers and requesting parties;
- **Other measurement tools: working group meetings, professional events** were held to involve other target groups.

The following figure illustrates the measurement tools and methods used in target-group-specific researches.

² The sample size (and, where relevant, sample composition) for data request trials and website analyses was the same for each target-group-specific research.

Figure 5 : Research Methods and Tools



In the case of Research 4, given its focus, website analysis and the trial data requests were not used due to lack of relevance.

The following table shows the number of primary data collections carried out during the project.

Table 1: Number of Data Collections Carried out during the Implementation of the Researches

| | | Research 1 | Research 2 | Research 3 | Research 4 | Total |
|------------------------------|-----------------------------|------------|------------|------------|------------|--------|
| Website analyses | Expected number of elements | 3 210 | 203 | 1 000 | | 4 413 |
| | Realized | 3 210 | 203 | 1 000 | | 4 413 |
| | Percentage | 100% | 100% | 100% | | 100% |
| Questionnaire surveys | Expected number of elements | 1 000 | 221 | 1 000 | 100 | 2 321 |
| | Realized | 1 125 | 248 | 1 000 | 100 | 2 473 |
| | Percentage | 113% | 112% | 100% | 100% | 107% |
| Trial data requests | Expected number of elements | 3 210 | 203 | 1 000 | | 4 230 |
| | Realized | 3 210 | 203 | 1 000 | | 4 230 |
| | Percentage | 100% | 100% | 100% | | 100% |
| In-depth interviews | Expected number of elements | 50 | 20 | 50 | 20 | 140 db |
| | Realized | 50 | 20 | 50 | 20 | 140 db |
| | Percentage | 100% | 100% | 100% | 100% | 100% |

2.5 OTHER PROJECT ACTIVITIES SUPPORTING RESEARCH

In addition to the research-related activities listed in the previous chapter, the chart in subsection 3.2 (Table 2) shows that **several other activities provided information to support the researches**, and there were also outputs produced that are partly related to the researches undertaken. These are **guidelines and recommendations** which, for the most part, analyze and interpret certain processes of enforcing freedom of information in a more horizontal way.

Throughout the project, a number of **events and professional forums** were organized, which, on the one hand, supported the research—by providing an opportunity for direct communication with the target groups of the research—and, on the other hand, provided a feedback platform where representatives of target groups got to know the results attained.

In parallel with the researches, **the international benchmark analysis** was carried out, the results of which are presented in a separate study.

The development of the **online information portal** is still ongoing at the time of writing, but by the time the Project is physically completed, it will be available to the widest possible public with all its features.

These activities are covered in detail in Chapter 8 of this study.

2.6 THE KEY FINDINGS OF THE PROJECT

The domestic **implementation of freedom of information presents a rather contradictory picture**, which will become more apparent in the following chapters, when the results of the individual researches are presented in detail. **While the Hungarian regulatory system can be considered adequate—in some cases, even outstanding—by international**

standards, and the supervisory and redress bodies fulfil their roles adequately, the research—especially in the target group of Research 3 and in the local-government sector (see results of trial data requests)—has revealed a very high level of deficiencies on the part of data controllers in their compliance with their obligations.

In summarising the findings of the researches, it was necessary to use the term "practices highly in need of improvement" several times for non- or partial compliance, as this was a way of pointing out deficiencies and processes/parts of processes in need of improvement.

The results of the researches clearly confirmed the preliminary assumption that proactive publication is one of the most important tools for enforcing freedom of information. Reinforcing proactive publication with guarantees is therefore one of the most important objectives, as it can increase the effectiveness of freedom of information in the future.

The research identified problems that can be traced back to legal regulation, which can be remedied by legislation or legislative amendment.

The specific proposals for change and intervention points formulated by the Project are set out in the "Summary Report for Decision Makers".

3 TARGET GROUP 1: THE TRANSPARENCY OF LOCAL GOVERNMENTS

3.1 METHODS OF RESEARCHING LOCAL GOVERNMENT

Research Project 1 focussed on **local governments**, all of them, as well as **national-minority self-governments**. The aims and functions of the research with regard to the target group was as follows:

- **building on primary and secondary research**, to examine in detail and comprehensively **the practices** of the target group in **implementing disclosure** and **publication obligations** and their evolution;
- to identify **anomalies on the part of the data controller, the causes of failures, non-performance or inadequate performance** and the underlying **deficiencies**, possible **problems of interpretation of the law** and **other obstacles to performance**;
- to **develop proposals** for supporting decision making on the part of the NAIH and/or the government to **address the problems, anomalies and deficiencies identified**, and the measures that need to be taken, taking into account the good practices available.

Achieving these objectives is covered in the documents described in subsection 3.2.3.

3.2 PRACTICES IN IMPLEMENTING PUBLICATION AND DISCLOSURE OBLIGATION

The measurement tools used in this research provided results of varying representativeness and reliability.

- **Website analysis and trial data requests** for local governments and national-level national-minority self-governments were full, i.e. all the organizations concerned were examined. Accordingly, the results achieved through these tools are fully objective and factual. With regard to the research questions and hypotheses for which these two tools provide information, the results they brought were the primary source of evaluation.

- **Online questionnaire surveys** were representative of the distribution of local governments by geographic location and size of settlement, and the large number of elements provided very reliable results.
- **Qualitative measurement tools**—in-depth interviews with local governments and focus group interviews with requesting parties—complemented the results from quantitative measurement tools, shedding light on deeper causal relationships and perfecting the numerical results with explanatory information.

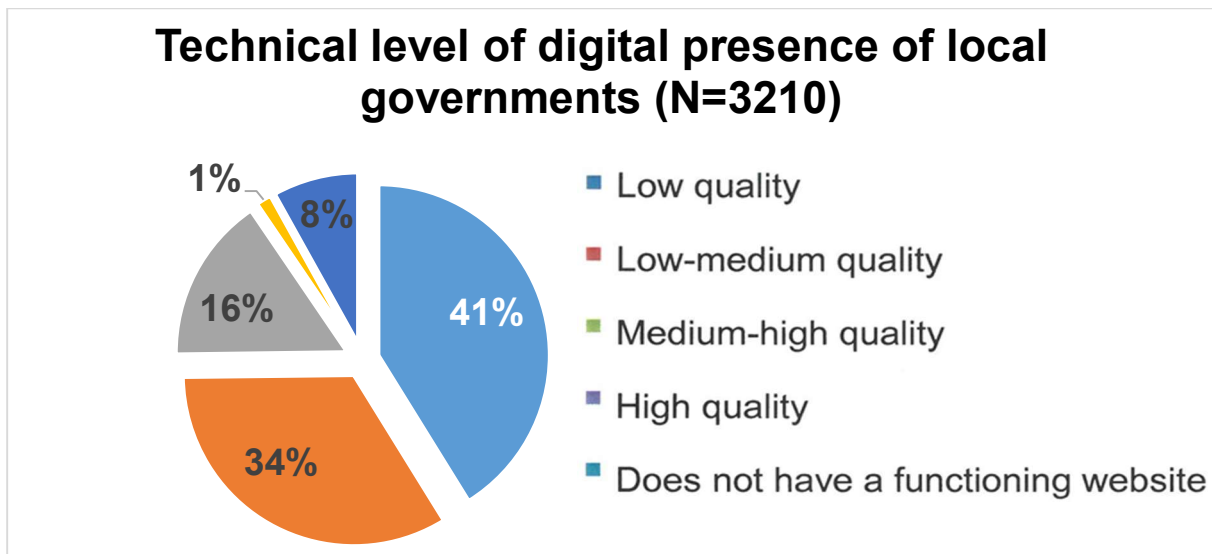
As the evaluation of each research question and hypothesis was provided with information by different combinations of measurement tools, in some cases it was based on fully objective data, in other cases the findings and conclusions drawn were more evaluative.

3.2.1 Findings of Website Analyses

Website analyses on local governments focussed on the **compliance with electronic publication obligations**. The analyses covered **all** local governments and national-level national-minority self-governments, so that a total of 3210 websites of organizations were analysed on the basis of a unified checklist. Data for website analysis were collected in autumn 2021. Accordingly, a snapshot was taken within the framework of website analyses (and thus the data content of individual websites may have changed since the data was collected). Website analysis concentrated on legal compliance, primarily with and compliance with the publication obligation under the Info Act and Government Decree No. 305/2005 (XII. 25.).

Although the research was not designed to assess the digital quality of websites, such information is relevant in terms of publication. With regard to the **existence and characteristics of websites**, it was found that **92% of the local governments surveyed had their own websites**. The **technical quality of the digital presence (search engine, site map, multilingual site, accessibility) was low to medium**. Smaller-size settlements are more likely to have no website or a lower technical level of digital presence.

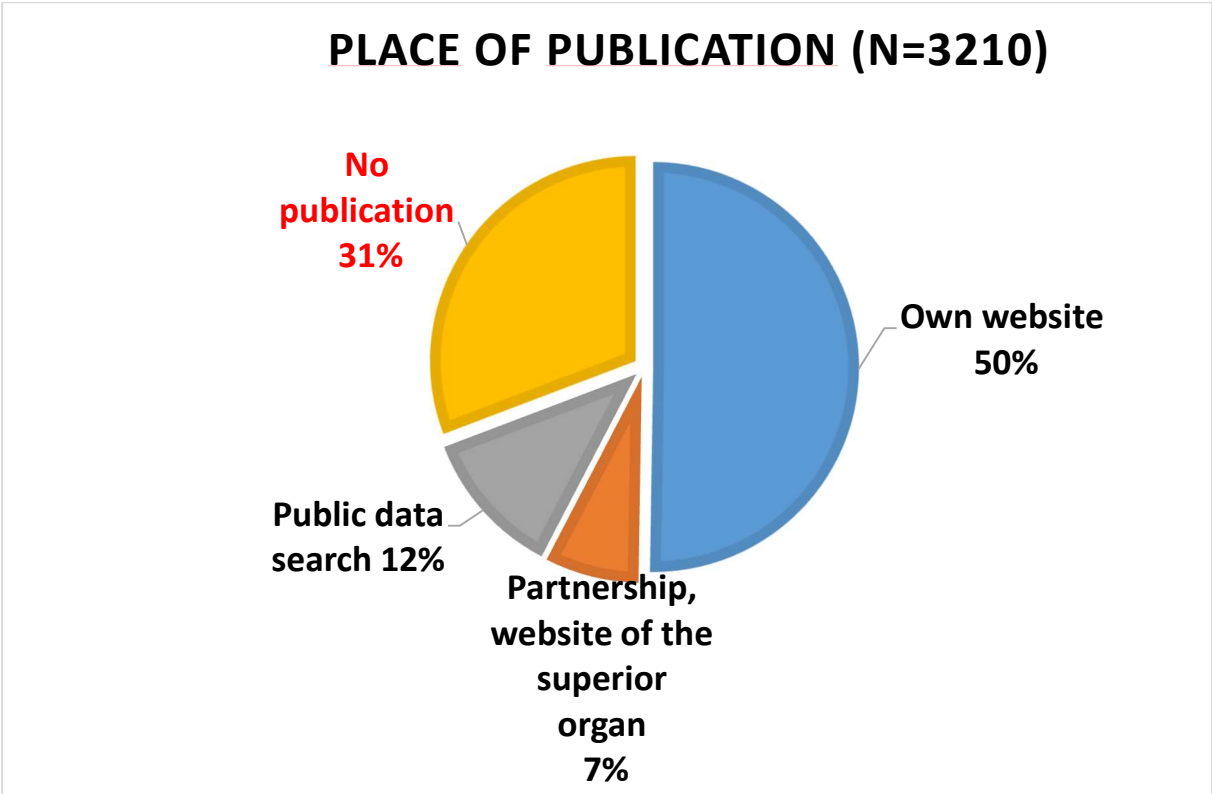
Figure 8: The Technical Level of Digital Presence of Local Governments



The analysis showed that the existence and especially the quality of websites clearly correlates with settlement size: settlements with an independent mayor's office all have websites. As regards the quality of websites, it was found that only 47% of the local governments surveyed have search engines (this is a major obstacle to exercising freedom of information), 92% have information available only in Hungarian (with limited information available in minority languages), and all-in-all **17% of the websites can be considered to be of good technical quality.**

The place of publication was of particular importance in the assessment of the publication obligation. As per its General Publication Schemes, the Info Act specifies where and what data must be published by the organizations subject to it. According to the website analyses, **half of the local governments (50%) comply with the obligation on their own websites**, a further 7% on websites maintained by associations or superior organs, while 12% only use the integrated retrieval system for public data. (It is important to note here that publication on the Integrated retrieval system for public data is mandatory, yet less than 20% of local governments have updated it in the last two years.) Moreover, 31% of the local governments surveyed, i.e. **almost one in three, do not indicate their publications on any interface.**

Figure 9: Results of the Analyses of Local Government Websites—Place of Publication

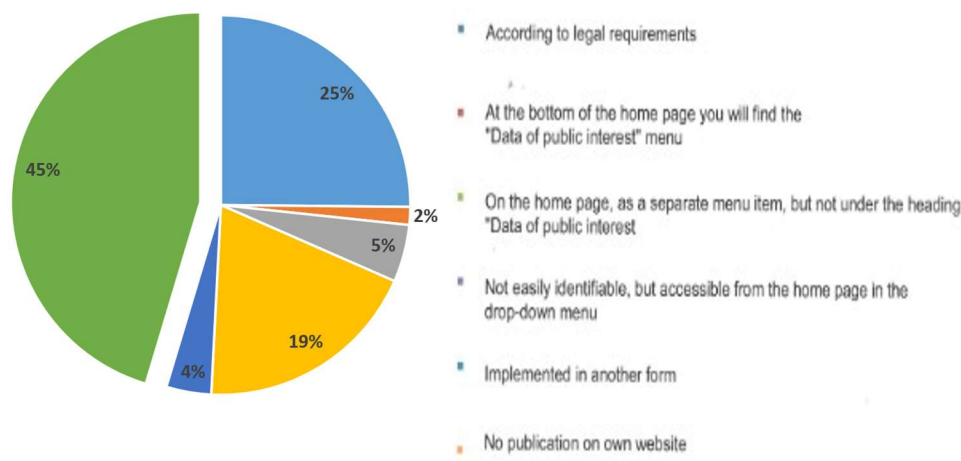


Method and adequacy of publication: organizations with their own websites would be expected to comply with their publication obligation there as well, but only 25% of the local governments surveyed comply fully with the legal requirements, 19% of them have a menu item for data of public interest³ available but not easily identifiable, while 45% do not publish any information on their websites.

³ For example: "data of public interest" tabs have information for tourists and locals, or "public interest/transparent pocket" tabs have different kinds of information.

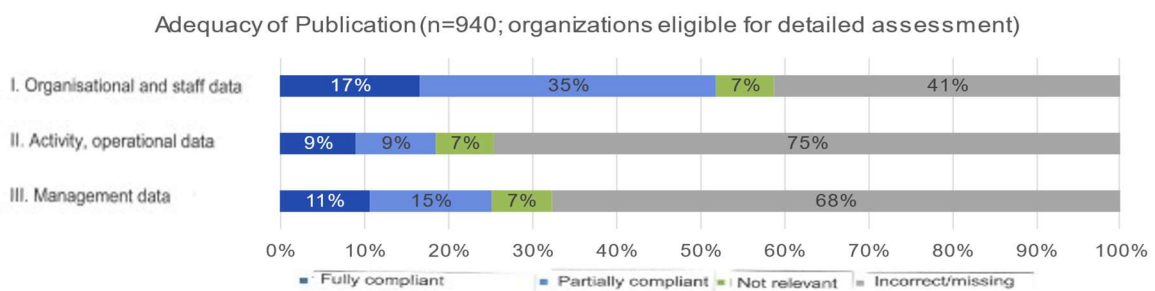
Figure 10: Results of the Analyses of Local Government Websites – Mode of Publishing

**Publication on local governments' own websites
(N=2951)**



Examining the content and quality of data publication, the figure below shows the appropriateness of the website presence of each unit in the case of websites assessed where the General Publication Schemes were applied. In Hungary, the annex to the Info Act specifies the data to be published as per Schemes I–III. Compliance was best with respect to Organizational and staff data (Scheme I) and least good with regard to Data related to activities and operations (Scheme II). *The larger the settlement, it was found, the better the publication practice.*

Figure 11: Adequacy of Data Publication under General Publication Schemes



3.2.2 Findings of Trial Data Requests

The trial data requests focussed on examining **local government fulfilment of data requests**. Among the bodies of the local government sub-system, local governments and national-level national-minority self-governments were fully included in the trial data request, thus a total of 3210 organizations received the data request.

The measurement tool of trial data requests consisted of six easy-to-answer/complete questions about the data that should be both accessible and available at the data controller.

The questions and requests concerning the target group covered the following topics:

- 1) The regulations governing the procedures for fulfilling requests for access to data of public interest pursuant to Section 30 (6) of the Info Act.
- 2) The regulations on the electronic publication of data of public interest pursuant to Article 35 (3) of the Info Act.
- 3) The name and contact details of the competent department, the name of the person responsible for information rights as per Annex 1, Scheme II (13) of the Info Act.
- 4) The latest annual environmental status report pursuant to Section 3 of Government Decree 311/2005 (XII. 25.) on the procedure for public access to environmental information;
- 5) The following data on the contracts concluded by the organization on the use of public funds and the management of public property with a value of between HUF 1 million and HUF 5 million for the purchase of goods, construction works, services, sale of property, use of property, transfer of property or property rights, and concession:
 - a. the type of the contract;
 - b. the subject of the contract;
 - c. the names of the parties to the contract;
 - d. the value of the contract;
 - e. in the case of a fixed-term contract, its duration; and
 - f. changes in these data. ⁴
- 6) The following details of the enforceable contracts pursuant to Section 41 (6) of the Act on Local Governments for the provision of public services within the scope of the local government's responsibilities:
 - a. the type of the contract,
 - b. the subject of the contract;
 - c. the names of the parties to the contract;
 - d. the value of the contract;
 - e. in the case of a fixed-term contract, its duration; and
 - f. changes in these data.

The data received were analysed according to a pre-defined set of criteria, on the basis of which researchers processed and recorded the characteristics of the responses to the data requests in a database.

⁴ Explanation of the data request: "Please indicate as the value of the contract the consideration agreed for the subject of the contract, net of VAT, and, in the case of a free transaction, the higher of amount of either the market value or the book value of the assets. In the case of recurring contracts, those of more than one year's duration, please calculate the value on the basis of the amount of the consideration calculated for a year. Please add together the value of contracts concluded with the same contractor in the same financial year and having the same subject matter. Please provide data for contracts concluded by the organisation in 2020. "

Table 2: Results of Trial Data Requests to Local Governments

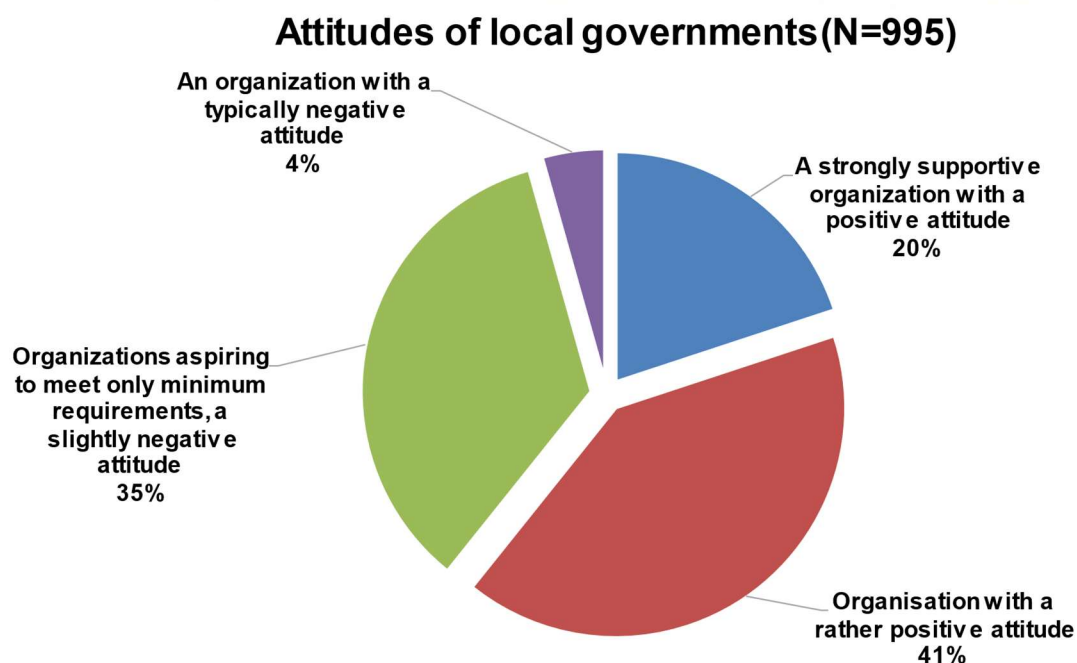
| | Question 1 | Question 2 | Question 3 | Question 4 | Question 5 | Question 6 |
|---|------------|------------|------------|------------|------------|------------|
| Fulfilled lawfully | 20% | 19% | 20% | 5% | 22% | 20% |
| Fulfilled but not lawfully | 23% | 23% | 20% | 8% | 19% | 18% |
| Rejected | 14% | 16% | 14% | 39% | 16% | 18% |
| No response received during the survey period | 43% | 43% | 45% | 48% | 43% | 45% |

Of the 3 210 local authorities surveyed, the number of organizations fully meeting the legal requirements for a request for data of public interest was 99, and their proportion was only 3.1%. A total of 1311 organizations—41% of the local governments—failed to answer any of the questions, while a further 10% of them rejected all of them unlawfully. The remaining local governments (45%) partially fulfilled the data requests.

3.2.3 Findings of the Online Questionnaire Survey

The purpose of the online questionnaire was to explore the experiences and challenges faced by data controllers—in the context of this research, local governments—in relation to publication obligations and requests of data of public interest. The questionnaires sent out were completed at least partially by 866 local governments and 259 local-level national-minority self-governments out of a target group of nearly 5000 (all local governments and national-minority self-governments). Questions concerning attitudes were answered by 955 organizations. In order to meet representativeness criteria, local government samples were weighted by population for settlement organs (regional weighting was not required); county local governments and national-minority self-governments were not weighted.

Figure 12: Attitudes of Local Governments—Based on Online Questionnaire



Based on the responses to the online questionnaire, a slightly more positive picture emerges: 2/3s of respondent organizations are strongly supportive or have a positive attitude based on self-admission.

3.3 THE INDEXATION OF LOCAL GOVERNMENTS

The performance of local governments in the area of freedom-of-information duties—alongside the settlement-level evaluation of the website analyses and trial data requests—was indexed for each settlement.

An index score was established for each organization based on the information gathered by the research on local governments on the disclosure of data of public interest and data public on grounds of public interest. The index score, on a scale of 0 to 100, indicates the level of compliance with the law and the “standing” of the organization in relation to the other organizations in the target group.

The indexation was developed on the basis of the results of the following data collections:

- **website analyses** of the local-government target group (all local governments and national-level national-minority self-governments, 3210 organizations, included) based on a predefined set of criteria, which resulted also in an organization-level database; and
- **evaluation of the responses** of the local-government target group (all local governments and national-level national-minority self-governments, 3210 organizations, included) to the **trial data requests, based on a predefined set of criteria**, likewise also resulting in an organization-level database that can be linked to the above database.

The measurement system (the index) was designed to guarantee comparability in case of a possible future remeasurement. **The index is composed of several dimensions: the two main dimensions are online publication and individual data requests, which have further sub-dimensions.** The sub-dimensions are made up of individual indicators. The weighted average of the indicators gives the values for the sub-dimensions, the weighted average of the sub-dimensions gives the value of the main dimensions, and the weighted average of the main dimensions gives the index score. The index score is made up of the result of the website analysis with a weight of 60%, which can be broken down into the following sub-dimensions: general information provision (5%), mode and arrangement of publication as per publication scheme (45%), quantitative and qualitative correspondence of the publication scheme elements (50%). The other 40% of the aggregated index score is made up of the results from the trial data requests (the average of the criteria-based evaluation of the answers to the six questions asked in the framework of data requests).

Figure 13 a-b): Methods and Results of Indexation

a)

Website analysis (60% weight):

1. **General information** and mandatory publication on their own website.
2. Mandatory electronic **publication and how to organize it according to the publication scheme** in accordance with the Privacy Act
3. **Quantitative and qualitative adequacy of the elements of the publication list**

Data request (40% weight):

Based on the **assessment of the completion of the 6 questions**, the way each question is completed:

- lawful fulfillment;
- unlawful fulfillment (unlawful request for an extension of deadline/ request for personal data / unlawful use of a form or channel / unlawful request for clarification / unlawful request for reimbursement of costs);
- unlawful refusal;
- no answer.

b)

Organisations in 5 categories - out of 100 points, the average self-government scored 30

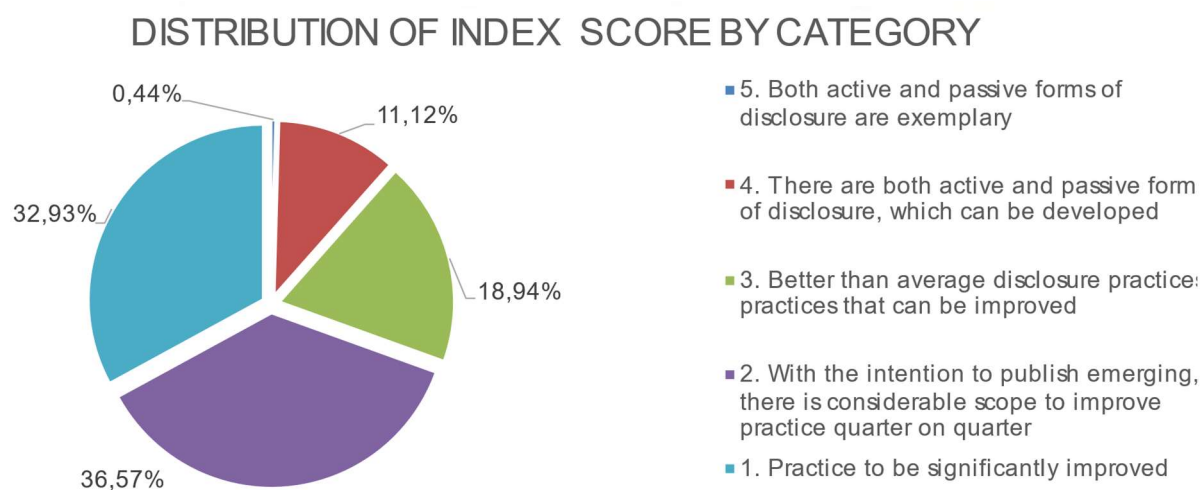
Categories:

| Category | Category name | Point boundary | Number of self-governments categorised |
|----------|--|--------------------|--|
| 5 | Both active and passive forms of disclosure are exemplary | 80 points or above | 14 |
| 4 | There are both active and passive forms of disclosure, which can be developed | 60 - 79 | 357 |
| 3 | Better than average disclosure practices practices that can be improved | 40 - 59 | 608 |
| 2 | In addition to the emergence of a willingness to publish, there is considerable scope for improving practice | 20 - 39 | 1174 |
| 1 | Practice to be significantly improved | 0 - 19 | 1057 |

Based on the aggregated index score, **organizations can be classified into the following 5 categories:**

- **Practice to be significantly improved:** the aggregate index score of the 1057 organizations falling in this category is up to 20 out of 100.
- **In addition to the willingness to publish, there is considerable room for improvement in practice:** the aggregate index score of the 1174 organizations in this category ranges from 20 to 40 out of 100.
- **Better than average disclosure practices, practices that can be improved:** the aggregate index score of the 608 organizations in this category is above average (30), ranging from 40 to 60 out of 100.
- **Active and passive forms of disclosure are exercised, but can be improved:** the aggregate index score of the 357 organizations in this category ranges from 60 to 80 out of 100.
- **Both active and passive forms of disclosure are exemplary:** the 14 organizations in this category have an aggregate index score of at least 80 out of 100.

Figure 14: Distribution of Index Scores by Category

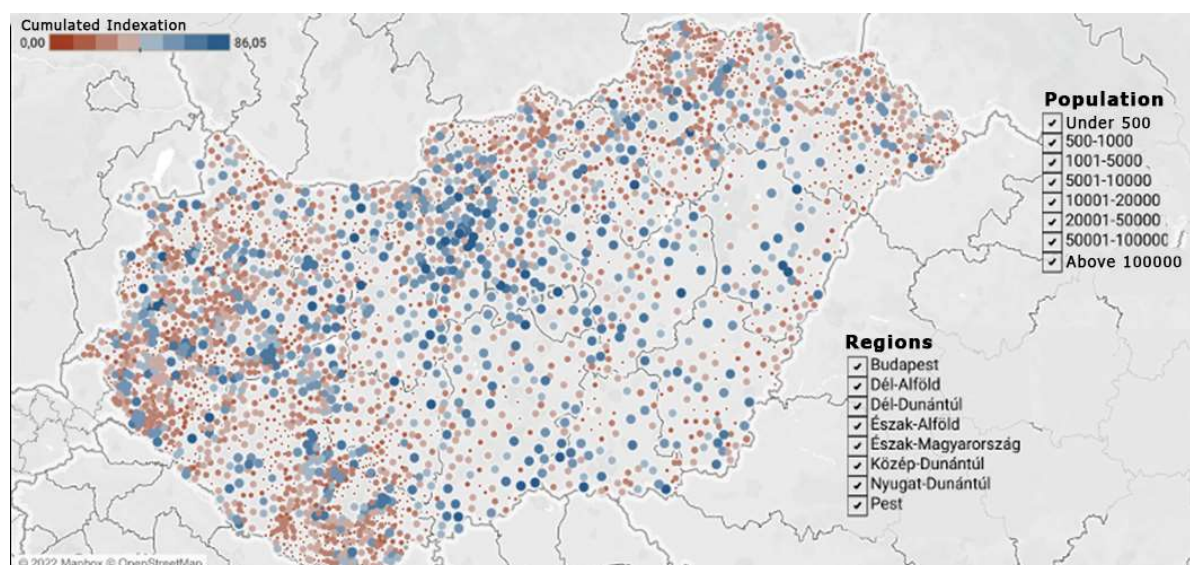


The indexation of local governments is, as it were, a snapshot in the autumn of 2021, when the data collections that made up the indexation took place. The results of the indexation show that there is a significant correlation between settlement size and the score achieved; i.e. small settlements typically score lower. This may be due to the fact that their websites are simpler, less frequently updated, and they are not familiar with or seldom encounter the institution of data requests. Due to settlement size, non-compliance is also due to capacity constraints. A total of 14 settlements, typically Budapest districts and cities with county status, but some exemplary smaller settlements, were ranked in the top category.

On 27 September 2022, the NAIH published on its website the list of best performing, exemplary settlements based on the indexation⁵.

⁵ <https://naih.hu/dontesek-informacioszabadsag-tajekoztatok-kozlemenyek?download=561:tajekoztato-a-projekt-kereteben-megvalosulo-onkormanyzati-indexalas-eredmenyeirol>

Figure 15: Index Score for the Whole Country



3.4 KEY RESEARCH FINDINGS AND RECOMMENDATIONS

The research was carried out on the basis of the documents described in subsection 3.2.3 of this document. The most important recommendations made among the many in connection with the research and in this comprehensive study are highlighted below.

3.4.1 Harmonization of the Rules of Publication under the Info Act and other Laws

The first hypothesis (H1.1.) was that *"currently, the majority of local governments do not fully comply with the disclosure and publicity obligations set out in the Info Act"*. The research results supported the hypothesis that it can be clearly stated that the majority of local governments do not currently comply with their disclosure and publicity obligations set out in the Info Act, in terms of neither electronic publication nor requests for data of public interest.

The following hypothesis (H2.3.) is related to this problem: *"proactive publication by the majority of local governments does not meet the legal requirements, neither in terms of fullness and content nor form (including updating and archiving)"*. The research results supported the hypothesis: proactive publication shows major shortcomings, and the electronic publication practices of the vast majority of local governments do not meet the requirements of Annex 1 of the Info Act and related laws. Even finding the data and information was a major problem due to the fact that the content was not published in the place and with the indication required by law. Although data and documents uploaded partially fulfilled the formal requirements (e.g. readability, accessibility), **content of the publication** left much to be desired: there were hardly any organizations that ensured the publicity of all disclosing departments in an adequate way. **Archiving requirements** were not met in the majority of cases.

The research results only partially confirmed the following hypothesis (H8.2): *'the Info Act and directly related regulations are clear and sufficiently detailed for local governments'*. The majority of local governments consider the rules on the obligation to publish electronically to be clear; however, some consider that the publication schemes in Annex 1 of the Info Act is too complex and difficult to follow, and that clearer guidance (e.g. precise specimen publications) would be useful. Some local authorities have indicated that they have problems with the lack of congruence between the Info Act, Ministry of Informatics and Telecommunication Decree No 18/2005 (27.12.2005),⁶ and Government Decree No

⁶ Ministry of Informatics and Telecommunication Decree No 18/2005 (XII. 27.) on specimen publications for the publication of data in publication schemes.

305/2005 (25.12.2005)⁷. Although a significant number of local governments do not consider it difficult to understand the rules for the fulfilment of requests for data of public interest, the survey results show a high and overall uncertainty in this respect.

In the opinion of the researchers, the *harmonization of the Info Act and Ministry of Informatics and Telecommunication Decree 18/2005 (XII. 27.)*, as well as the clarification of the requirements would provide a solution to the above issue. Critical comments on electronic publication mainly concerned the overly complicated description of the data publisher units listed in Annex 1 of the Info Act. This problem also includes the fact that the annexes to the Info Act and of Ministry of Informatics and Telecommunication Decree 18/2005 (XII. 27.) have different structures for listing data publisher units.

3.4.2 The Information Officer

Hypothesis H3.3 assumed that local governments/offices that employ a trained, experienced officer responsible for information rights would be significantly better at complying with their freedom-of-information obligations. **The research results supported the hypothesis** there is a strong correlation between performance and the existence of a trained and experienced information officer. According to the commitment model, a significantly higher proportion of better performing organizations in categories 1 and 2 have an information officer on their staff with relevant training and experience than in significantly worse performing organizations in categories 3 and 4 (the latter have no or a much lower proportion of designated information officers, and if they do have any, they are much less likely to have the relevant training and experience).

Related to the above, hypothesis H.3.4. assumed that the mode and practice of fulfilling the obligations related to freedom of information is closely related to the approach and attitude of the information officer. Based on the results of the research, the hypothesis proved to be true, because when the factors determining performance and attitude are assessed together, it is clear that the more committed an organization is to openness and transparency, the more effectively it fulfils its freedom-of-information responsibilities.

Unfortunately, the following assumption (H3.5.) also proved to be true: in the case of local governments, the majority of designated information officers have a low priority for freedom-of-information tasks. Information and publicity tasks make up only a small part of the time of information officers, and only in around 5% of the organizations is the information officer only and exclusively responsible for freedom-of-information tasks. As the information officer is most often the notary, publicity and information tasks are secondary to other notarial tasks, and are therefore not given priority. It was also repeatedly mentioned in the in-depth interviews that these tasks do not fit into the day-to-day running of the local governments or are not considered to be “equal” duties to the running of the local government. In cases where the tasks are performed by the data protection officer or colleague⁸ (typically in larger settlements), better practices and attitudes can be seen.

One in four to five local governments believe that the appointment of an officer responsible for information rights at organs registered with the NAIH and performing public duties should be mandatory, but this would only help them to work effectively if the appointment is accompanied by appropriate training. The local governments consider that this requires adequate funding (human resources with appropriate skills). In the meantime, the use of external expertise can alleviate capacity constraints (which of course also raises the need for funding).

3.4.3 Public Awareness And Education on Freedom of Information

Hypothesis H2.1 proved to be true: the general practice of informing the public varies widely in quality and depth across local governments. The general practices of informing the public vary widely from one local government to another. The range of communication tools used varies—mainly—according to the size of the settlement: the local governments of smaller settlements tend to use more personal communication channels, while larger ones prefer impersonal mass communication with a wider reach.

⁷ Government Decree No 305/2005 (XII. 25.) on the detailed rules concerning the electronic publication of data of public interest, the integrated retrieval system for public data, the content of the central register, and data integration.

⁸ See the guidance on Data Protection Officers: https://www.naih.hu/files/WP243_rev01_hu.pdf

At the same time, the quality and depth of communication is primarily determined not by objective factors (e.g. type of office, size of settlement) but by the approach and attitudes of local governments: there are examples of effective and appropriate communication in small settlements, while in some large cities there is a major deficiency in this respect.

Hypothesis H9.2 is correct, that performance can be improved through information and knowledge sharing events and the presentation of good practices. In addition to practice-oriented information material, local governments would also find personal forms of knowledge transfer very useful: training courses are the most commonly considered necessary (46%); in addition, one in three local governments would welcome other kinds of knowledge-sharing events. The latter events should be easy to understand and focus on the transfer of practical information.

The above is supported by hypothesis H11.1: *As long as the general cultural context does not move towards regarding transparency and publicity important, local governments will not make significant progress in this area.* The research findings supported this hypothesis: according to the focus group interview participants, the political climate also has a strong influence on local practices and attitudes, and currently the general political climate is clearly working against openness. But local governments also believe (according to the in-depth interviews with them) that the issue of publicity has taken on a distinctly political tone in recent years.

According to assumption H12.1, *the range of citizens who exercise their rights related to freedom of information is very narrow (i.e. there is no general interest of citizens in data of public interest or in data that are in the public domain relating to the operation and activities of organs performing public duties).*

The research results support the hypothesis that, although there has been some improvement in recent years, the number of people who make data of public interest disclosure requests is still very limited, due to shortcomings in public attitudes, lack of awareness and knowledge of rights, but also due to the experience of failure and fear of repercussions.

The attitude of data controllers is that they perceive information and publicity tasks as an extra burden, and, in many cases, they consider public interest data requests as "pestering".

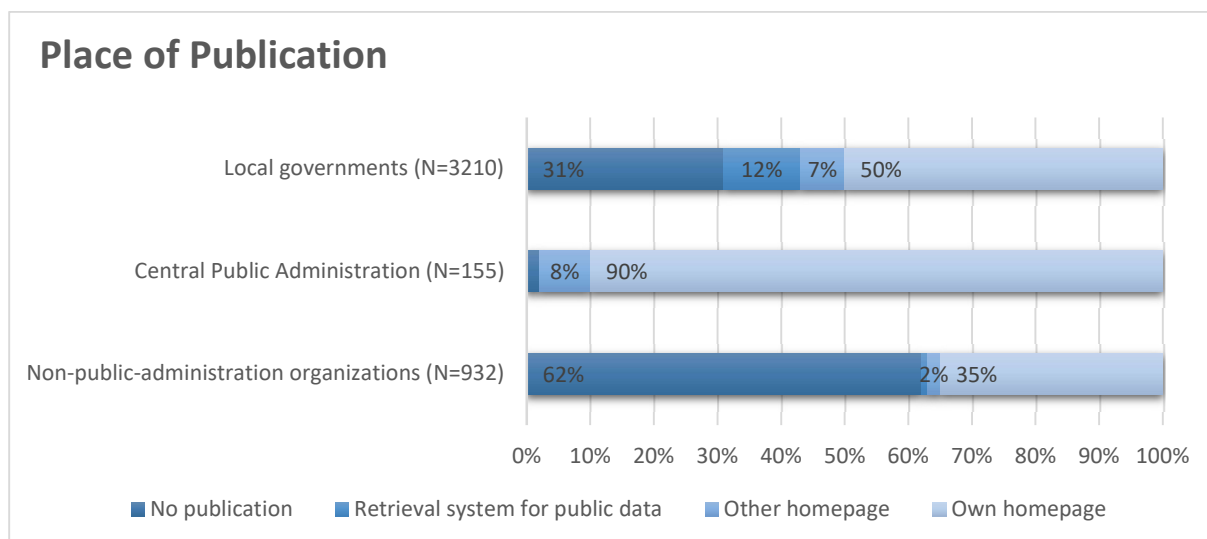
The availability of information, the public accessibility of data of public interest, is currently quite limited. To better enforce freedom of information as a fundamental right, major changes are needed on both the requesting parties' and the data controllers' side: on the citizens' side, mainly by raising awareness of rights, and on the data controllers' side, by improving attitudes and commitment. For this, external support and assistance seems essential:

For the majority of citizens, freedom of information is a strange issue, and they lack knowledge about it, therefore a change of attitude towards freedom of information is essential for potential data controllers, but it can only be effective in the long term. At the same time, a wider promotion of the right to access data of public interest and its integration into public awareness can contribute to the effectiveness of data requests by increasing the level of awareness of data subjects.

In order to change the attitude, it is recommended that freedom of information be included in public education. In addition, the NAIH should give priority to its information and education activities on freedom of information, for example by publishing more accessible materials in addition to specialist materials to inform the wider public, and by producing abstracts and short summaries from specialist materials. In addition, there is a need to **educate the public from school age onwards**: how to exercise their fundamental constitutional rights to access data; how to submit a request for data of public interest (guide); and what legal remedies are available. A platform should also be set up to provide citizens and civil society with clear information on which organizations they can request data from, how and what data they can request. All these possibilities should be communicated to the public:

3.5 LOCAL GOVERNMENTS COMPARED TO THE OTHER TWO TARGET GROUPS

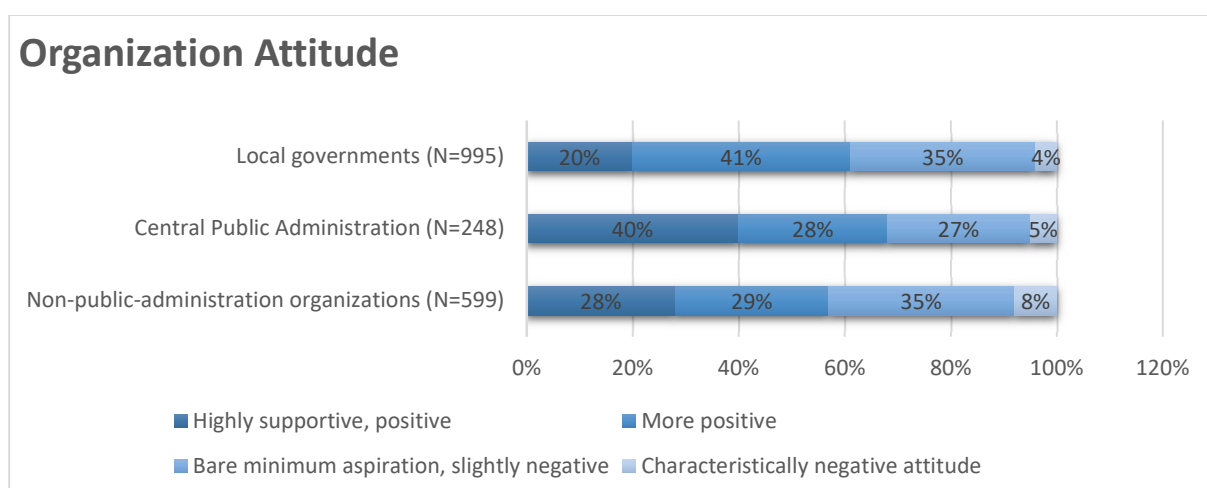
The three target-group-specific researches (local government, central public administration and non-public-administration actors subject to publication obligation) followed the same logic and methodology, allowing for a comparison of the research results, the most important of which are the following.



Local governments take the middle rank (69%) between central administration (98%) and actors nonpublic administration (38%) in terms of compliance with the publication obligation. One third of local governments (31%) have no publication record at all. As regards publication on their own websites, the other two target groups performed much better.

As stated above, **one third of the local governments have no publication record, putting them in the middle of the ranking.** This is because the central administration performed outstandingly well, while almost two thirds of the third target group have no record of published data of public interest.

When examining the content of the published data on the basis of the minimum requirements set out in the law on publication, it can be concluded that none of the target groups performed 100% lawfully. Almost one third of the local governments published the relevant data in accordance or partially in accordance with the law (this means around 1,000 local governments). Proportionally, however, the local-government target group still performed in the middle rank compared to the other target groups. Only around half of the local governments that uploaded relevant content were able to fulfil their legal obligation to publish as defined by the law.



The research on the implementation of freedom of information by local governments has found that more than half of local governments have a positive attitude towards freedom of information and recognize its constitutional purpose.

4 TARGET GROUP 2: THE TRANSPARENCY OF CENTRAL PUBLIC ADMINISTRATION

4.1 METHODS OF RESEARCHING CENTRAL PUBLIC ADMINISTRATION

Research 2 examined **the public access to the central public administration**, including the bodies named in Section 33 (2) (a) of the Info Act, of which independent regulatory organs; autonomous organs of state administration; national law enforcement organs and the Military National Security Service; the Government and the Prime Minister's Office; ministries; ministers without portfolio; government main offices; capital and county government offices were fully, while, with the exception of the subordinate bodies of the Hungarian State Treasury (MÁK) and the National Tax and Customs Administration (NAV), school districts; judiciary organs (courts, prosecutor's offices), central offices, hospitals, Hungarian diplomatic missions were included in the survey population by way of sampling procedure.

With regard to the target group, the purpose and role of the research was:

- **building on primary and secondary research, to examine in detail and comprehensively the practices of the target group in implementing disclosure and publication obligations and their evolution;**
- **to identify anomalies on the part of the data controller, the causes of failures, non-performance or inadequate performance and the underlying deficiencies, possible problems of interpretation of the law, and other obstacles to performance;**
- **to develop proposals supporting the NAIH and/or government decision making to address the problems, anomalies and shortcomings identified, and the measures that need to be taken, taking into account the good practices that can be found.**

The achievement of these objectives is covered in the documents described in subsection 3.2.3.

4.2 PRACTICES OF IMPLEMENTING OBLIGATIONS OF PUBLICATION AND DISCLOSURE

The measurement tools used in Research 2 produced different results due to their different types:

- **Website analyses and trial data requests** covered certain types of organs of the central public administration in full, while other types were sampled, and all types of organs were sampled with a number of elements appropriate for the analyses. Accordingly, the results from these measurement tools are objective and factual. For the research questions and hypotheses for which these two measurement tools provide information, their results are the primary source of evaluation.
- Although the **online questionnaire survey** was not expected to be representative, and it therefore had limitations in terms of generalisability, it can be said that the data collection

resulted in a unique and rich source of information from which well-founded conclusions could be drawn.

- Qualitative tools of examination—in-depth interviews analysing organizational issues covered ministries and ministers without portfolio⁹, as well as additional in-depth interview surveys and focus group interviews—complement the results of quantitative measurement tools, shedding light on deeper causal relationships and providing explanatory information on numerical results.

4.2.1 Findings of Website Analyses

The focus of the **website analyses** of the organs of central public administration was on the **compliance with the electronic disclosure obligation**. The level of proactive freedom-of-information practice, the implementation of the electronic disclosure obligation, was explored by analysing the websites of the organizations concerned. The website analysis is a content analysis method, whereby the websites of the organizations selected for the target group were examined.

From among the organs examined, the following constituted the sample population of Research 2 (203 in total):

- **as per Section 33 (2) (a) of the Info Act: independent regulatory organs; autonomous organs of state administration; national law enforcement organs and the Military National Security Service; the Government and the Prime Minister's Office; ministries; ministers without portfolio; government main offices; municipal and county government offices were fully included;**
- **as well as school districts; judiciary organs, and the central offices**—with the exception of the subordinate organs—of the Hungarian State Treasury (MÁK) and the National Tax and Customs Administration (NAV);
- the regional organs of law enforcement organizations, the subordinate organs of the Hungarian State Treasury (MÁK) and the National Tax and Customs Administration (NAV), Hungarian diplomatic missions, hospitals, vocational training centres, school district centres, and judiciary organs by way of a sampling procedure following regional criteria, not in full.

However, the above sample included a discrepancy, which required the survey to be conducted on a corrected sample with a size of 155 (hereafter N=155).

The reason for the discrepancy is that, on the basis of the legal analysis carried out in the course of the research, the researchers' opinion was that several of the sampled independent legal entities **are not subject to the publication obligation** independently, given that the entity concerned is not an independent budgetary organ but operates as a unit of another (independent budgetary organ).

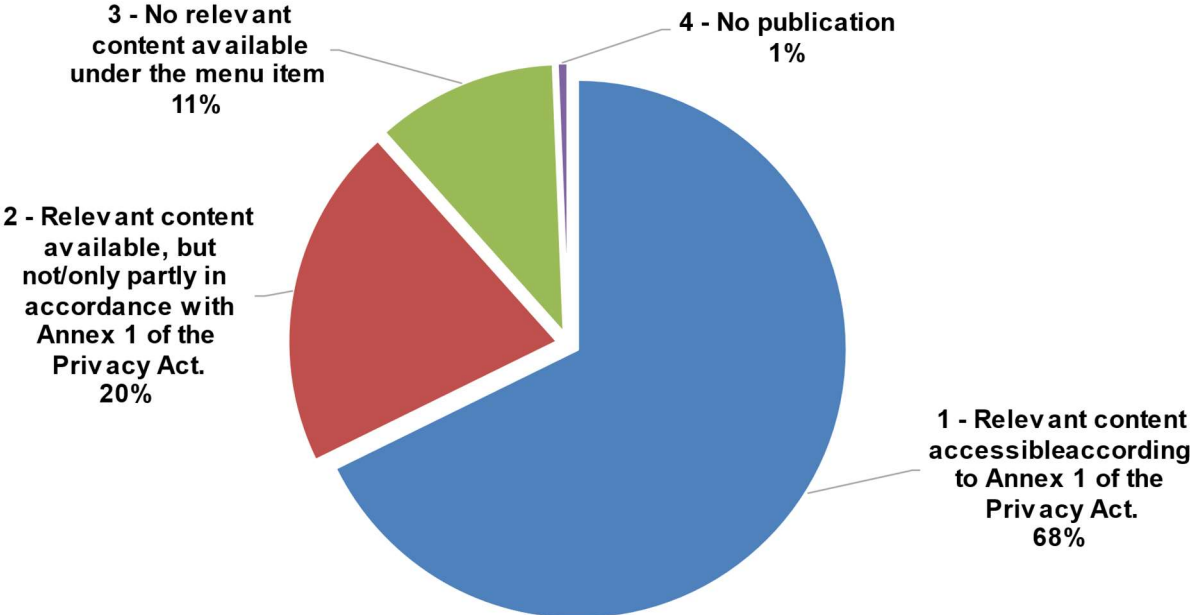
It is also important to note that the data collection for this research took place between 18 September and 18 October 2021. Accordingly, the website analyses were based on, as it were, snapshots—the data content of each website may have changed since the research was conducted.

The number of websites with relevant content available as per Annex 1 of the Info Act was 105 (meaning 68%). 32 (20%) of the websites had relevant content available, but not or only partially in accordance with the division in Annex 1 of the Info Act (e.g. the three main blocks—I. organization, II. activity, III. financial management—were unnamed, and/or the information under the three blocks was not arranged and named according to the publisher unit. 17 (11%) of the websites did not have relevant content according to Annex 1 of the Info Act at the time of the inspection under the links to data of public interest, while 1 (1%) did not have any disclosure at all.

⁹ The analysis of results and data collection was done before April 2022, so it includes results for the ministerial setup at that time.

Figure 6: Findings of Website Analyses of the Central Administration

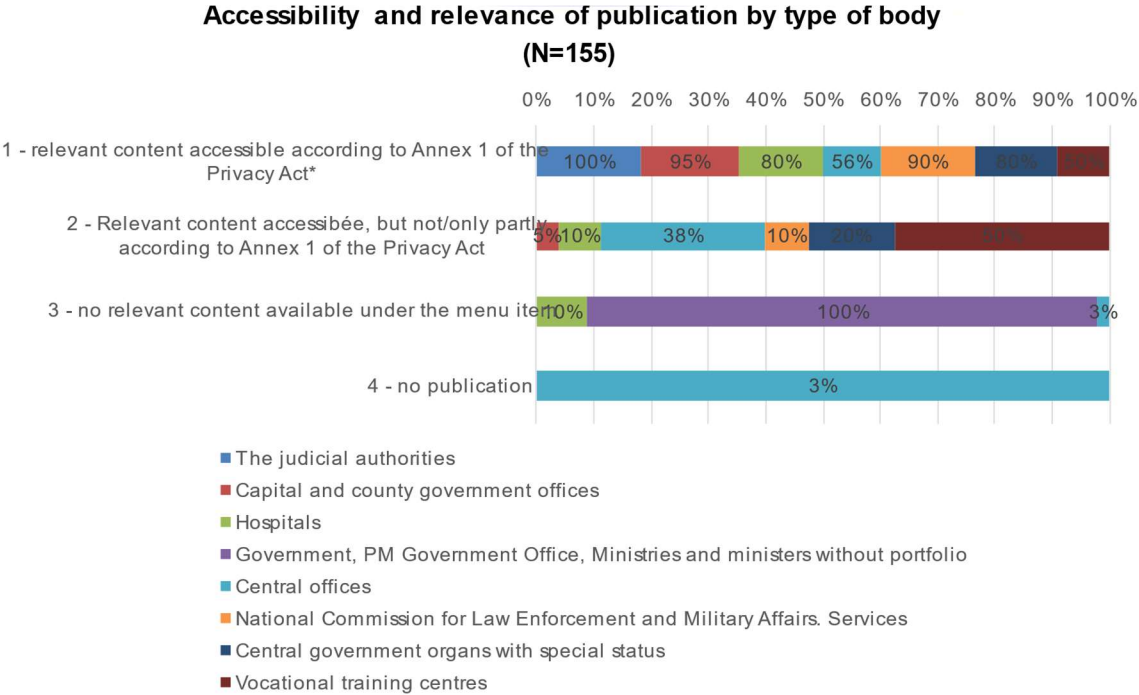
Accessibility and Relevance of Publication (N=155)



Based on the above, 68% of the corrected sample (N=155), i.e. 105 organizational websites, met the criteria of inclusion in the in-depth analysis on the basis of the content and quality criteria of publication. All in all, one third of sites examined in the total sample did not meet the legal requirements and the conditions for detailed examination.

In the case of the present research, it is worth examining how the accessibility and relevance of the content of disclosures evolved by type of organ.

Figure 17: Analyses of Central Public Administration – Publication by Type of Organ



With regard to types of organ, 100% of the websites of the organs of the judicial system, the penitentiary system, and the disaster management service had relevant content accessible according to Annex 1 of the Info Act, and 95% of the websites of government offices did so.

Close to 80% of the websites of hospitals, police and special-status central public administration organizations surveyed met the requirements of detailed analysis at the time of the research, while only half of the websites of vocational training centres and national parks did so.

However, none of the 15 government organ websites examined met the requirements of in-depth investigation.

4.2.2 The Findings of Trial Data Requests

The focus of the trial data requests to central public-administration organs was to **examine the practice of fulfilling data requests**. Trial data requests **were sent to the organizations in the same sample as the website analyses**. In a trial data request, the measurement tools consisted of seven easy-to-answer questions and easy-to-fulfil requests: these referred to data meant to be both accessible and available with the data controller. The data received were analyzed according to a predefined set of criteria, on the basis of which the researchers processed and recorded the characteristics of the responses to the data requests in a database.

The following questions and requests were sent during trial data requests:

- 1) Regulations governing the procedures for fulfilling requests for access to data of public interest pursuant to Section 30 (6) of the Info Act.
- 2) Regulations governing the electronic publication of data of public interest pursuant to Article 35 (3) of the Info Act
- 3) The name and contact details of the competent department and the name of the person responsible for information rights according to Annex 1, II.13 of the Info Act.
- 4) The court registry numbers (case numbers) of the lawsuits to obtain access to data of public interest brought against the organization in 2018, 2019, and 2020.
- 5) The following details of contracts by the organization for outsourcing public services in force:

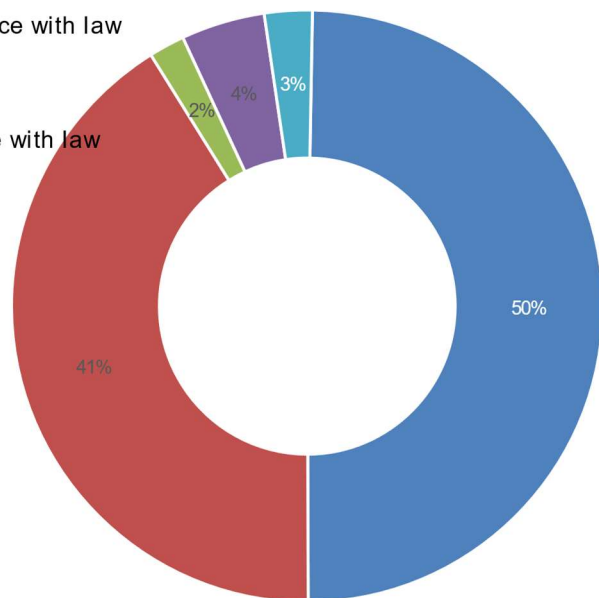
- a. the type of the contract;
 - b. the subject of the contract;
 - c. the names of the parties to the contract;
 - d. the value of the contract;
 - e. in the case of a fixed-term contract, its duration; and
 - f. changes in these data.
- 6) The following data of outsourced media services (communication activities, advertising activities) and the procurement of legal and lawyer services contracted in 2020:
- a. subject of contract; and
 - b. exact names of the parties to the contract.
- 7) Unique and special publication schemes in force for the organization.

The analysis of the results of the trial data requests showed that **no organization completed** the trial data request in full pursuant to law. **Half** of those independently required to publish data **complied partially with requirements** and a further 41% complied partially with the data requests but not in accordance with the law. Only 2% refused the data request completely.

Figure 18: Central Administration - Findings of Trial Data Requests

Findings of trial data requests

- Implementation partially in accordance with law
- Partially implemented but never fully in accordance with law
- Rejected in entirety
- No result during the research period
- Full implementation but not always in accordance with law

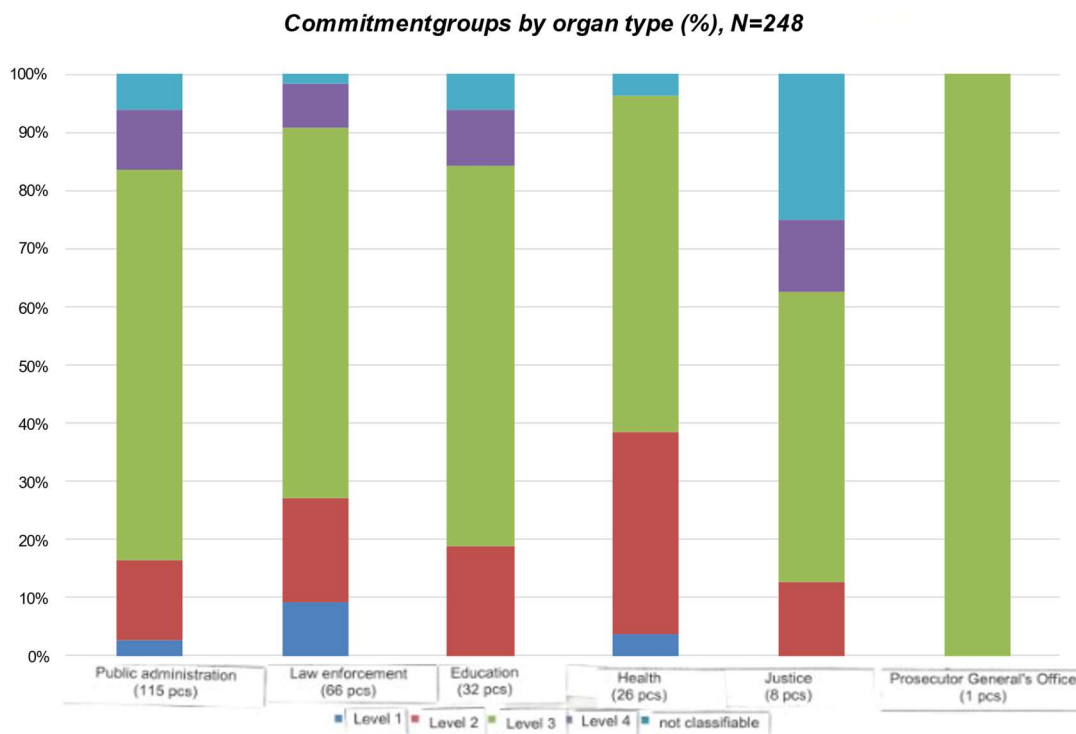


N Stand-alone obligors = 153; *N* non-stand-alone obligors = 45

4.2.3 Findings of the Online Questionnaire Survey

The online questionnaire survey was conducted among central-administration organs to **examine data controllers' experiences and their perceived challenges concerning freedom of information**. All organs surveyed in the scope of the research on central public-administration publicity were fully covered by the online questionnaire, with the exception of the diplomatic missions. Among the diplomatic missions, only the ten organizations sampled in the website analyses and trial data requests were contacted. **The revised population of Research 2 at the time of the online questionnaire was 738. The analysis focused only on fully completed questionnaires (N=248).**

Figure 19: Central Administration - Results of Online Questionnaire Survey



Level 1: Highly committed, with commitments beyond legal requirements (exemplary);

Level 2: Committed, but seeking only to fulfil legal obligations;

Level 3: Low commitment, with major deficiencies;

Level 4: Not committed, not engaged in the area in a meaningful way

- Level 1, the highest proportion of highly committed organizations among law enforcement organs;
- Level 2, the highest proportion of organs committed but striving only to fulfil their legal obligations in the health sector;
- Levels 4 and 3, high proportions least compliant organizations among the judiciary and the prosecutor general's office.

4.3 PROPOSALS TO IMPROVE TRANSPARENCY IN CENTRAL PUBLIC ADMINISTRATION

The research was conducted along the lines laid down in the documents described in subsection 3.2.3. Only the most important of the many suggestions made with regards to the research are highlighted below.

4.3.1 Harmonization of the Rules on Publication Obligations

Hypotheses H1.1-2 made certain assumptions about the realization of the publication obligations of central-administration organs. According to the first hypothesis (H1.1), central public-administration organs typically do not fully comply with their publication obligations on their websites. **Overall, the hypothesis proved to be true.** Almost two thirds of the organizations in the sample surveyed made the relevant content accessible according to Annex 1 of the Info Act. **However, with regard to all data, only 43% of the organs surveyed complied at least partially with the legislation requiring publication. Full compliance (including the indication of non-relevant data) accounted for just over 25% of the total sample for all data publisher units.** The low figure is tempered by the fact that the majority of organizations did not indicate if a piece data was not relevant to them, which the analysis classified as "not lawful". For the 44 data units in the general publication scheme, even for the best performing data publisher units, just under two thirds of the organizations surveyed met the legal requirement of completeness.

The second hypothesis (H1.2) was that central public-administration organs fulfil the obligations under the Info Act more easily than the publication and disclosure duties under sectoral legislation. **This hypothesis as a whole was not confirmed by the research results: organs do not fulfil the obligations under the Info Act per se more easily than the publication and disclosure duties under sectoral legislation.** The majority of the respondents of in-depth interviews stated that they had not experienced any difference in the fulfilment of the disclosure publication under sectoral legislation or the Info Act. Rather, they highlighted as a main problem that in many cases they had perceived overlaps and differing requirements in the Info Act and sectoral legislation. It should be noted here that almost half of the respondents to the questionnaire indicated that the main difficulty in relation to publication was the need to be aware of a wide variety of legislation, which, moreover, is subject to frequent changes. This is partly an indication that they have to comply with publication obligations taking into consideration several pieces of legislation.

On the basis of the above, the amendments of Government Decree No 305/2005 (XII. 25.) on the detailed rules concerning the electronic publication of data of public interest, the integrated retrieval system for public data, the content of the central register, and data integration and Ministry of Informatics and Telecommunication Decree No 18/2005 (XII. 27.) on specimen publications for the publication of data in publication schemes are proposed, in particular as regards the format and place of publication, i.e. what should be published in what format/structure/template and where on a website. According to the researchers, Government Decree 305/2005 (XII. 25.) and Ministry of Informatics and Telecommunication Decree No 18/2005 (XII. 27.) on specimen publications for the publication of data in publication schemes do contain rules on the mode of publication, and disciplinary liability for failure to comply with them could in theory be established, but in practice such calling to account is unlikely to take, or have taken, place.

4.3.2 Laying down the Provisions on Transfer in the Info Act

Hypothesis H4.5 states that on the part of central-administration data controllers, the commitment to cooperation with other data controllers and requesting parties is low among leaders. Overall, the hypothesis proved to be true. As to the question whether, in the absence of competence, information is given to the requesting party about the competent public authority, the in-depth interviewees were virtually unanimous in their answer: there is no form of "transfer" or provision of information about the identity of the competent data controller. They argued that there is no legal obligation to do so, and some expressed solidarity with other public-administration organs: "we wouldn't want to burden other organizations needlessly". This is the case even if the (non-competent) organization consulted is quite certain about the identity of the competent data controller (e.g. the removal of competence due to reorganization or the involvement of the organization's background institution). When asked what they made of this practice as citizens, a lesser part of respondents considered that a more "customer-friendly" approach could be taken; while their majority could not (did not want to) imagine themselves in the place of citizens, and stressed that the law does not impose such an obligation. Among the latter, there are those who believe that "we can only act according to what the law requires, we have no further room for manoeuvre or discretion". In other words, leverage does not exist in any case or form, even when the competence of a background institution is concerned. This experience was also confirmed by the trial

data requests: in no case did those obligated to publish data independently transfer data requests to the competent organ.

During the in-depth interviews, comments were received from law enforcement organs that the Info Act includes no provision that if the original recipient of the data request does not have the requested data of public interest, it is obliged to contact the agency holding the requested data ex officio and transfer the case or inform the requesting party whom to contact. In the focus group interviews, it was also suggested by requesting parties that transfer should be regulated in procedural law; i.e. if the requesting party turns to not the data controller, he or she should be referred to the data holder, not at the expense of the time limit; or at least the organization should be obliged to inform the requesting party where the data might be. Given that there is a tendency to blame the other, participants considered that this attitude could be improved.

In the light of the above—also as a consequence of the general obligation of cooperation between data controllers and the TromsØ obligations—it would be **justified to lay down the provisions on transfer in the Info Act.**

4.3.3 The Information Officer

The assumption that the capacity, attitude, preparation, and knowledge of the human resources of public service organs correlate very closely with their compliance with the legal requirements (H5.1.) has been found to be true overall. The hypothesis was evaluated by comparing the results of the human capacity and organizational commitment study. In terms of commitment, all 10 organizations at Level 1 had an officer in charge of the duty as defined in the job description, while 11 of the 21 organizations with Level 4 commitment had no designated person in charge, and fulfilled the duties on a case-by-case basis. From the point of view of attitudes, it is important to highlight that even among those with a strongly supportive attitude, the proportion of respondents whose organization had no designated person in charge was around 20%, and the highest number of organizations (15) with no designated person in charge and fulfilling duties on a case-by-case basis was among those aspiring to meet only minimum requirements.

According to hypothesis H5.3, central public-administration organs with a trained and experienced information-rights officer would be better able to fulfil their freedom-of-information obligations. Based on the results of the online questionnaire, it can be concluded that organs with a trained and experienced information officer tend to fall into the higher commitment categories and also have fewer deficiencies.

The employment of an information officer is recommended in organizations carrying out activities related to data of public interest throughout the country in order to facilitate the exchange of information. The researchers are of the opinion that this idea should be supported but some conditions should be attached to its mandatory application. In practice, the introduction of such an institution raises a number of questions; on the one hand, the range of organizations within which the appointment should be compulsory should be thought through; on the other hand, the conditions for the post (qualifications, professional experience, participation in organized training, further training, etc.) should also be defined. The question of the obligation to notify the Authority also arises, as in the case of the DPO.

4.3.4 Creation of a Central Government Website to Improve Transparency

Although registered to the integrated retrieval system for public data, the majority of the organs of the central public administration are not directly linked to the menu item with the relevant content (the data of the given organ) (H2.7). Only 26 organizations (17% of the websites surveyed) had a link to kozadat.hu on their website, of which 20 had a clickable logo, but only 4 (3%) had a link to relevant content, i.e. their own records.

It is to be noted that barely a third of the respondents to the questionnaire updated in the last two years the data they are obliged to publish in the system.

The websites of central public-administration organs do not publish information on the use of budget resources in an appropriate, updated and easily searchable way (H16.5). Focus group interviews touching publicity of tenders confirmed this statement, as participants said that the way they saw it data and information were often uploaded in formats difficult to manage and search. This criticism was also reflected in the questionnaire filled in by requesting parties, who complained about the dumped sharing of public finance data, ensuring neither searchability nor transparency. With regard to the format of presentation, this was the area with the lowest proportion of HTML pages and the highest proportion of pages in image format in contrast to the other two blocks. Furthermore, this publication block had the highest number of searchability and copyability deficiencies.

Related to this is the assumption that the majority of stakeholders would support the introduction of a central public transparency platform to monitor the use of domestic budget resources, such as palyazat.gov.hu for tenders—especially if its maintenance did not require additional capacity on their part (H16.6). This suggestion was shared by the focus group interview participants touching the publicity of tenders. In their opinion, it would be useful and improve the transparency of the spending of public money related to domestic tenders if these also had their own website, such as palyazat.gov.hu for EU tenders.

A solution to the problems identified above could be to rethink the role of the integrated retrieval system for public data: to create a central system where publication data could be uploaded on a central interface, in a predefined structure and format. It would be worth considering a system that would both help requesting parties to access data of public interest and not impose a significant additional burden on data controllers. As outlined above, it is recommended that the development of the system be considered together with the concept of **an IT solution to support government transparency**—with the involvement of the National Infocommunications Service Company Ltd. (NISZ).

The Integrated retrieval system for public data (www.kozadat.hu) in its current form does not fulfil its function; the rules for publication on www.kozadat.hu are difficult for data controllers to understand and manage; failures to comply carry no sanctions and thus go unpunished, leaving the available data content incomplete and unreliable. A rethink of the system is recommended.

4.3.5 General Attitude Formation, Education

The general attitude towards freedom of information is illustrated by the following statement: *as long as the general cultural environment does not move towards the recognition of the importance of transparency and publicity, no significant progress can be expected in this area in the case of central public-administration organs either (H13.1)*. Deficiencies in attitude were also revealed in several focus group interviews: namely, citizens believe that organs performing public duties do not regard transparency as important to provide. At the same time, focus group meetings highlighted that citizens themselves have little awareness of freedom-of-information rights, and so that the demand for transparency does not necessarily arise on the part of citizens (e.g. there are no political consequences of being secretive; political priorities are different).

According to hypothesis H4.4, the *level of voluntary compliance can be improved by increasing awareness and training on both the data controller and the requesting party side*. An online questionnaire analysis of organizational commitment found that the level of voluntary compliance in the target group is very low (barely 4% of organizations); and that the vast majority of organizations that rate themselves as having a positive attitude are driven not by intrinsic motivation but primarily bureaucratic conformity. The majority of organs would find it useful to share good practices more widely. In particular, those that can broaden the use of voluntary practices that can be easily adopted by the target group and that result in good feedback. During the in-depth interviews, organizations also indicated their demand for awareness raising among requesting parties, and the same was also expressed by the NGO side during the focus group interviews.

NAIH's active involvement is needed in raising citizens' awareness and facilitating the data request processes:

- the information material for citizens available on the Authority's website needs to be promoted, which requires cooperation with the Government and NGOs in order to ensure that this information reaches the widest possible audience;
- processes to facilitate data requests, such as a website or even a sample data request form,¹⁰ need to be devised and publicized;
- the integration of freedom-of-information teaching materials and lessons in secondary education is also needed.

The researches have particularly highlighted that informing citizens and raising awareness is required in order to reduce poor quality data requests:

- education of data controllers and citizens;
- preparing clear guidance and information material for requesting parties on the processes of data requests;
- conducting information campaigns to raise the awareness and cooperation of citizens and NGOs, and informing them about their rights;
- building cooperation and trust with NGOs, citizens and journalists, by producing **practical guidelines for all**, including those subject to payment, in a way that is understandable to all (guidelines on who should provide what data and who should request what data in a request process for data of public interest, illustrated by practical examples);

¹⁰ A template/sample document should be published on the NAIH website specifically for citizens' requests for data of public interest, to show what citizens should refer to, what information they should provide in each case, and to inform them that, if they wish to request information of such scope, quantity or complexity from the organization concerned, they may be liable to pay for costs.

- in addition to the information documents already published by the NAIH¹¹, producing further practical guides and/or position papers for data controllers and citizens (as the interpretation of a legal text can be difficult for non-lawyers);
- to the benefit of both requesting parties and data controllers, issuing an **accessible periodical and/or holding regular** (e.g. quarterly) **press conferences**, where the main results and precedent cases are presented to the wider public;
- **conducting mini communication campaigns in electronic and social media** to raise awareness of freedom of information as a fundamental right, and to promote the importance of transparency through spots.

The NAIH should support data controllers. It is recommended that the NAIH, in order to support data controllers, should prepare and make available:

- publication and procedural guidelines proposing concrete solutions,
- model rules (e.g. model publication rules),
- sample forms.

Proposals concerning the role of the NAIH include, on the one hand, professional assistance to organs performing public duties in the interpretation of freedom-of-information legislation and the practical implementation of obligations, which can be summarized as follows:

- organization of regular knowledge-sharing events;
- provision of practice-oriented information material;
- organization of thematic training and education courses;
- closer cooperation, more direct and personal contact with the organs the NAIH conduct inquiries into;
- provision of opinions on specific questions of interpretation of the law that have arisen;
- carrying out assistance checks.

In the case of data controllers, capacity building and/or the provision of substantial external support seems essential to improve practices, but it is also important to raise awareness of the obligations these tasks impose on organizations. For these organizations, training and awareness-raising are needed; both awareness of the obligations and understanding of the importance of publicity and transparency are essential, as these organizations are characterized by both a lack of knowledge of their legal obligations and a lack of motivation (also largely due to a lack of knowledge).

Central public-administration organs feel that their greatest need is **for practical knowledge** to help them meet their legal obligations on freedom of information. The organs concerned would welcome practical assistance and supportive information in this area, which could be exchanged at knowledge-sharing events, sectoral forums, and in the form of information materials and guides. There is also a demand for thematic training and education courses.¹²

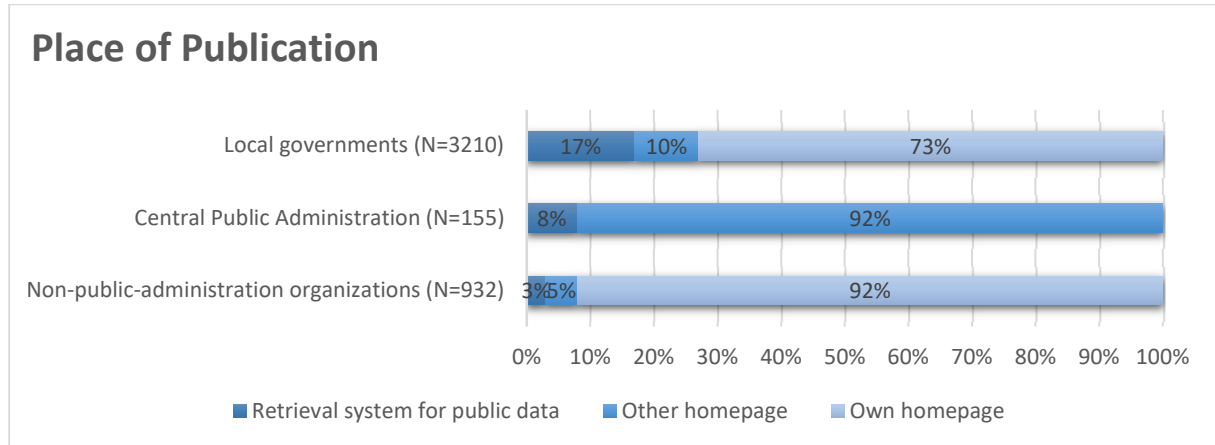
¹¹ For example: <https://naih.hu/dontesek-informacioszabadsag-tajekoztatok-kozlemenyek?download=137:2020-evi-tajekoztato-azebnilyvantartasrol-roviditett-verzio> and <https://naih.hu/dontesek-informacioszabadsag-tajekoztatok-kozlemenyek?download=139:a-naih-tajekoztatoja-a-kozossegi-oldalokon-megosztott-tartalmakkal-kapcsolatban-roviditett-valtozat>

¹² See the comprehensive research report entitled Research 2: Public Access to Central Public Administration.

4.4 CENTRAL PUBLIC ADMINISTRATION COMPARED TO THE OTHER TWO TARGET GROUPS

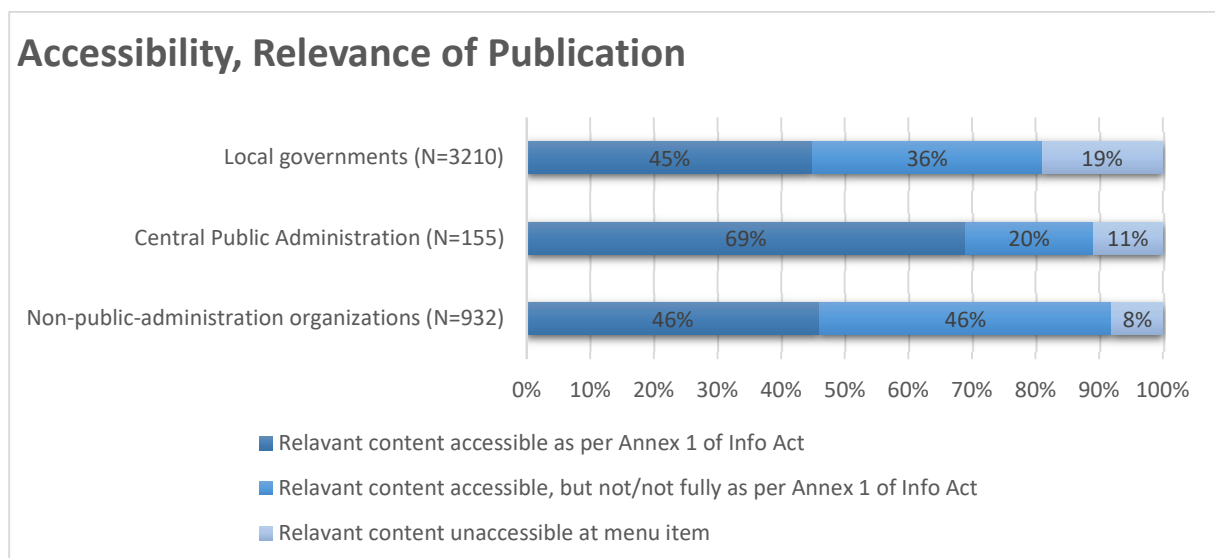
TARGET GROUPS

The research in the three main target areas (local authorities, central public-administration actors and non-public-administration actors subject to publication obligation) followed the same logic and methodology, allowing for a comparison of the research results, the most important of which are presented below.



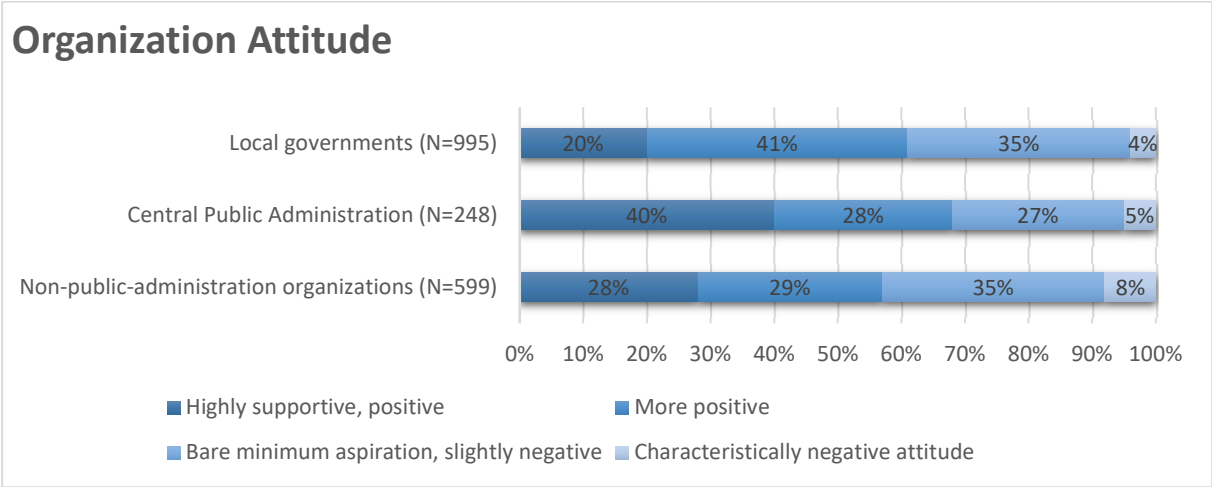
In the survey, central public-administration actors scored the highest (90%) in terms of compliance with their publication obligations. The data concerned are most easily accessible on the websites of these organs. Central public administration performed best among the target groups surveyed, with 92% of its organs publishing data on their own websites.

However, in addition to the high number of participants, it should be noted that this target group is the smallest (N=155).



When examining the content of the data published, no target group met 100% of the statutory minimum of publication requirements—i.e. no target group fully met the statutory requirements. Although the target group of central public administration excelled over other target groups, being the most law-abiding group, yet they still only achieved 69% (while only 45% of local authorities and 46% of non-

public-administration actors published data as required by the Info Act). On the positive side, there was no evidence for any of the central public-administration organs not publishing data at all.



In the survey measuring the attitudes of organizations, central public-administration organs performed best, with nearly two thirds (68%) of its organizations having a significantly more positive opinion of the role of freedom of information than the other two target groups.

5 TARGET GROUP 3: THE TRANSPARENCY OF NON-PUBLIC-ADMINISTRATION ORGANS SUBJECT TO PUBLICATION OBLIGATION

5.1 THE RESEARCH METHODS FOR NON-PUBLIC-ADMINISTRATION ORGANS SUBJECT TO PUBLICATION OBLIGATION

In relation to the implementation of the obligation to provide information on data of public interest under the Info Act, the research was carried out on the publication practices of data of public interest and data accessible on public interest grounds by those non-public-administration organizations that perform public duties and/or and/or manage public funds, and are not included in the research target groups 1 (local governments) and 2 (central public administration). **The target group includes state- and local-government-owned companies, public foundations, other non-profit organizations with a state or local-government background, public bodies** (public bodies supporting public authorities, professional chambers—chambers of commerce, professional chambers—public-sphere bodies, quality protection public bodies in the economy, public bodies for sports), **and higher-education institutions.**

The purpose and role of the research on the target group was as follows:

- building on **primary and secondary research**, to examine in detail and comprehensively **the practices of the target group in implementing data disclosure and publication obligations** and their evolution;
- to identify **anomalies** on the part of the data controller, the causes of failures, non-performance or inadequate performance, and the underlying **deficiencies**, possible **problems** of interpretation of the law, and other **obstacles hindering** performance;
- **to develop proposals** for decision support on the part the NAIH and/or government **addressing the problems, anomalies, and shortcomings identified**, and the measures that need to be taken, taking into account the good practices that can be found.

The achievement of these objectives is covered in the documents described in subsection 3.2.3.

5.2 PRACTICES OF IMPLEMENTING PUBLICATION AND DISCLOSURE OBLIGATIONS

As described in Chapter 3, data collection was carried out through website analyses, trial data requests, and questionnaire surveys, complemented by qualitative tools such as in-depth interviews and focus group interviews. A summary of their findings is presented below.

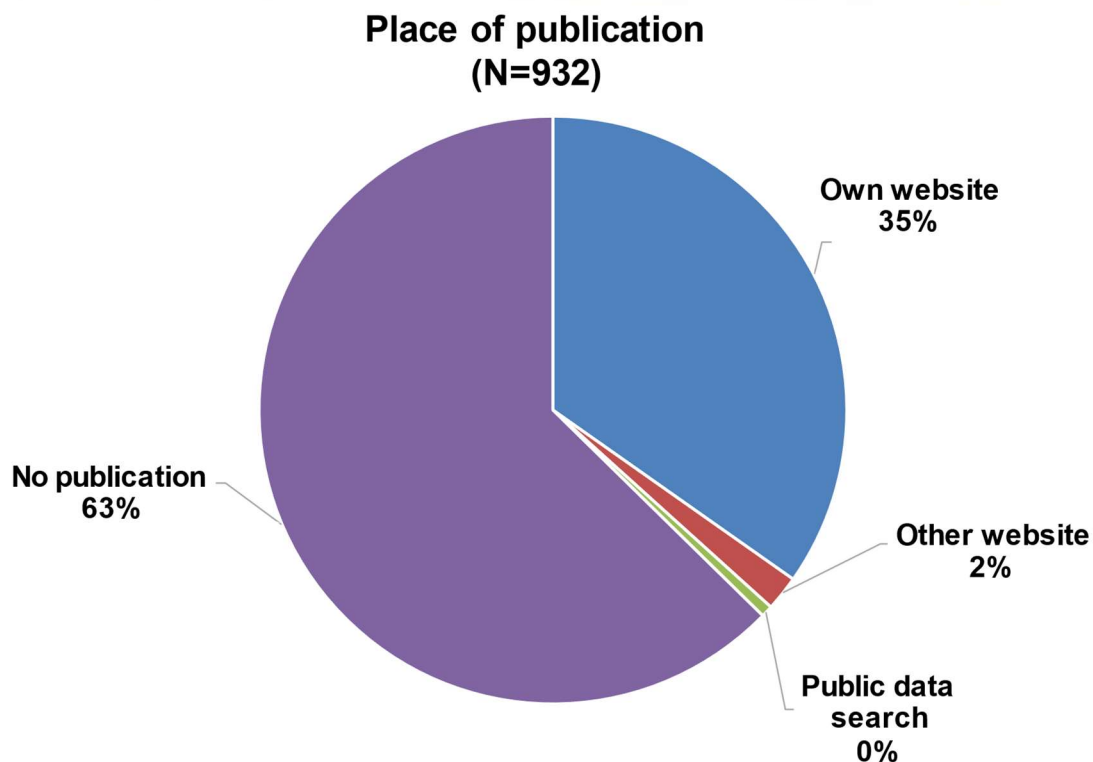
5.2.1 Results of the Website Analyses

The focus of the website analyses of non-public-administration organs subject to publication obligations on the **fulfilment of the electronic publication obligation. Research 3 analysed the websites of a total of 1,000 non-public-administration organizations selected for the study sample.**¹³

The place of electronic publication of the surveyed organizations (N=932)¹⁴ was as follows (regardless of content or completeness, **only** in terms of **place of publication**):

- For a third of the organizations surveyed (35%), the place of publication was their website;
- For 2% of them, the publication was on another website, typically the owner's or founder's website;
- For six organizations (0.6% of the organs surveyed), publication was only made on the Integrated retrieval system for public data;
- **Almost two thirds (63%) of the organizations surveyed had no indication of publication on any interface.**

Figure 20: Place of Publication



¹³ The data collection for the website analyses took place between 19 October and 11 December 2021. Accordingly, the website analyses were snapshot-like: of course, the data content of each website may have changed since the survey was conducted.

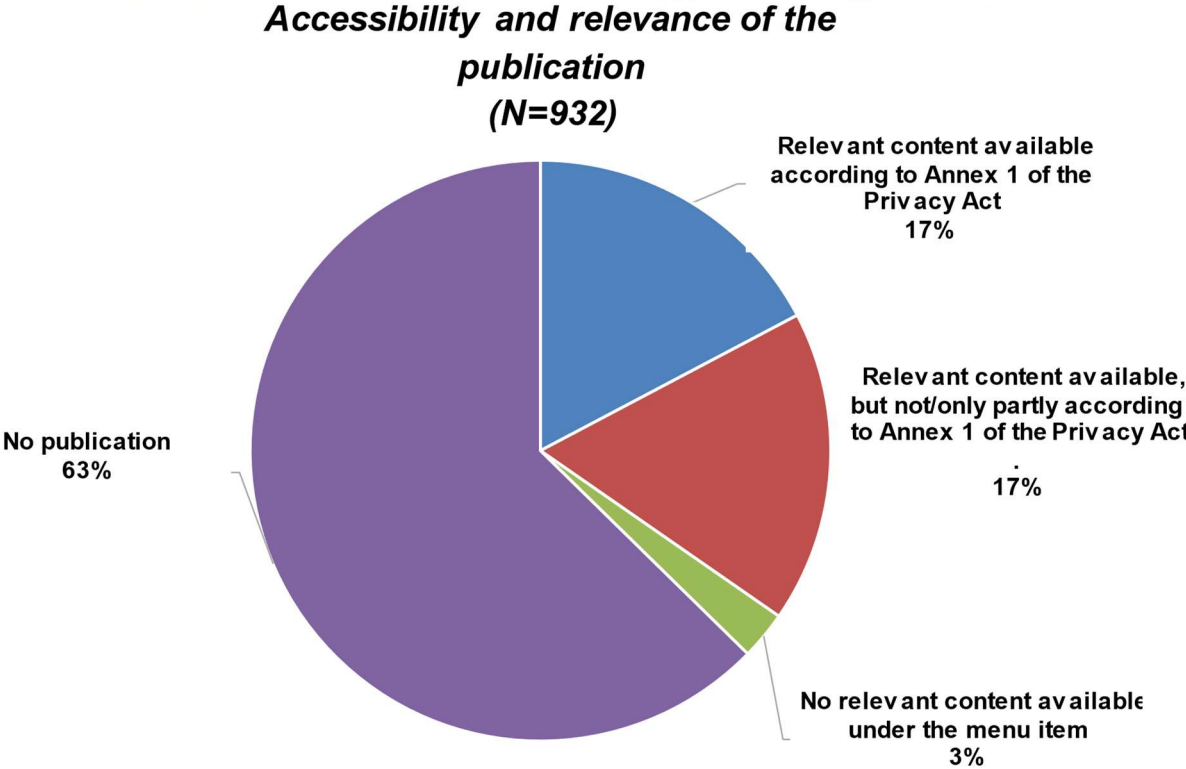
¹⁴ The data had to be collected on a corrected sample, as 31 organizations were under compulsory strike-off or wind-up at the time of data collection, 3 organizations were not legal entities registered in Hungary, the subgroups subject to the first sentence of Section 27 (3) and (3a) of the Privacy Act that were not performing public duties at the time of the survey (33 organisations in total) were excluded from the sample, and in one case there was a duplication in the sample, thus 1000-31-3-33-1=932

Comparing the results obtained here with the results of Researches 1 and 2, it can be said that, based on the website analysis method, **the subjects of Research 3 are the least law-abiding in terms of updating their publication schemes or even having it at all.**

By organ type, the following findings can be made:

- In the case of **foundations with a state or local-government background**, the **percentage of those that completely failed to publish (95%)** is extremely high: only 2.5% of the 279 examined foundations (seven foundations in total) acted in accordance with Annex 1 of the Info Act.
- One in five of the organizations subject to the first sentence of Section 27 (3) and (3a) of the Info Act fulfilled the conditions for a detailed examination.
- **One third** of the websites of **public bodies** complied with the legal requirements at the time of the survey; with the exception of the Hungarian Academy of Sciences (MTA) and the Hungarian National Olympic Committee (MOB), these were professional chambers.
- Among the publicly owned companies and/or organizations subject to the transparency obligation pursuant to Section 26 (3) of the Info Act and the organizations subject to the first sentence of Section 27 (3) and (3a) of the Info Act, the highest proportion of websites had the relevant information available, but they did not comply or only partially complied with the requirements of Annex 1 of the Info Act. This was one in four for the former and one in five for the latter.
- Out of the 32 **higher education** institutions surveyed, only **4 (12.5%)** websites met the criteria for detailed examination. 7 (22%) had relevant but incomplete content; 1 had no relevant data under the public interest menu item; and 20 (63%) had no publication at all.

Figure 21: Accessibility and Relevance of Publication Content



5.2.2 Findings of Trial Data Requests

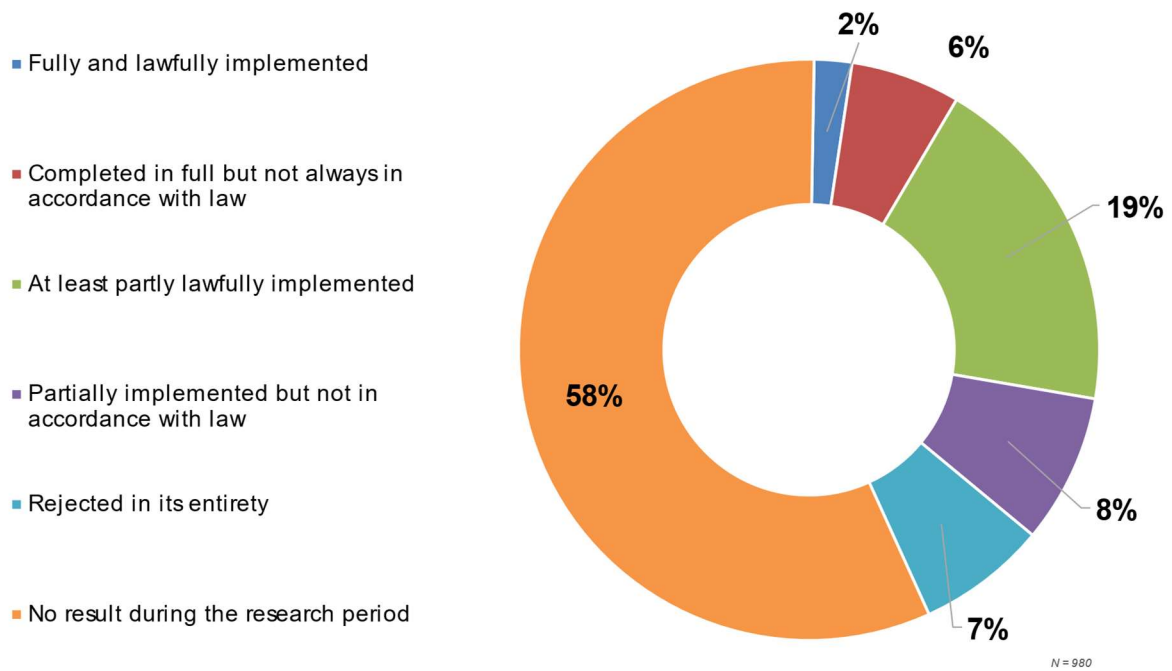
The focus of the trial data request survey of non-public-administration organs subject to publication obligations was also to **examine the practice of fulfilling data requests**. A trial data request was **sent to the same number of organizations as the website analysis (N=1000)**. The measurement tool for the trial data requests was a pre-defined set of criteria on the basis of which the researchers processed and recorded in a database the characteristics of the responses to the data requests. The researchers used 6 easy-to-answer questions and easy-to-fulfil criteria in a trial data request, which were as follows:

- 1) Regulations governing the procedures for fulfilling requests for access to data of public interest pursuant to Section 30 (6) of the Info Act.
- 2) Regulations governing the electronic publication of data of public interest pursuant to Article 35 (3) of the Info Act.
- 3) The name and contact details of the competent department and the name of the person responsible for information rights according to Annex 1, II.13 of the Info Act.
- 4) The following details of the contracts concluded by the organization in 2019 and 2020 for legal, communications and other consultancy services:
 - a. the type of the contract;
 - b. the subject of the contract;
 - c. the names of the parties to the contract;
 - d. the value of the contract;
 - e. in the case of a fixed-term contract, its duration; and
 - f. any changes to these data.¹⁵
- 5) The annual (aggregated) salary, remuneration, regular allowances, and reimbursement of expenses for the organization's top manager for 2020.
- 6) The following details of contracts in force with state and local government organs in relation to law-defined public services (including universal services) within their remit:
 - a. the type of the contract;
 - b. the subject of the contract;
 - c. the names of the parties to the contract;
 - d. the value of the contract;
 - e. in the case of a fixed-term contract, its duration; and
 - f. changes in these data.

21 organizations (2%) responded to the test data request **in full**, i.e. all the 6 data requests on different subjects were lawfully answered.

¹⁵ Further instructions in the data request: *"Please indicate as the value of the contract the agreed consideration for the subject of the contract, excluding VAT. Please provide the data for contracts concluded by the organisation in 2019 and 2020."*

Figure 22: Results of the Trial Data Requests (N=1000)



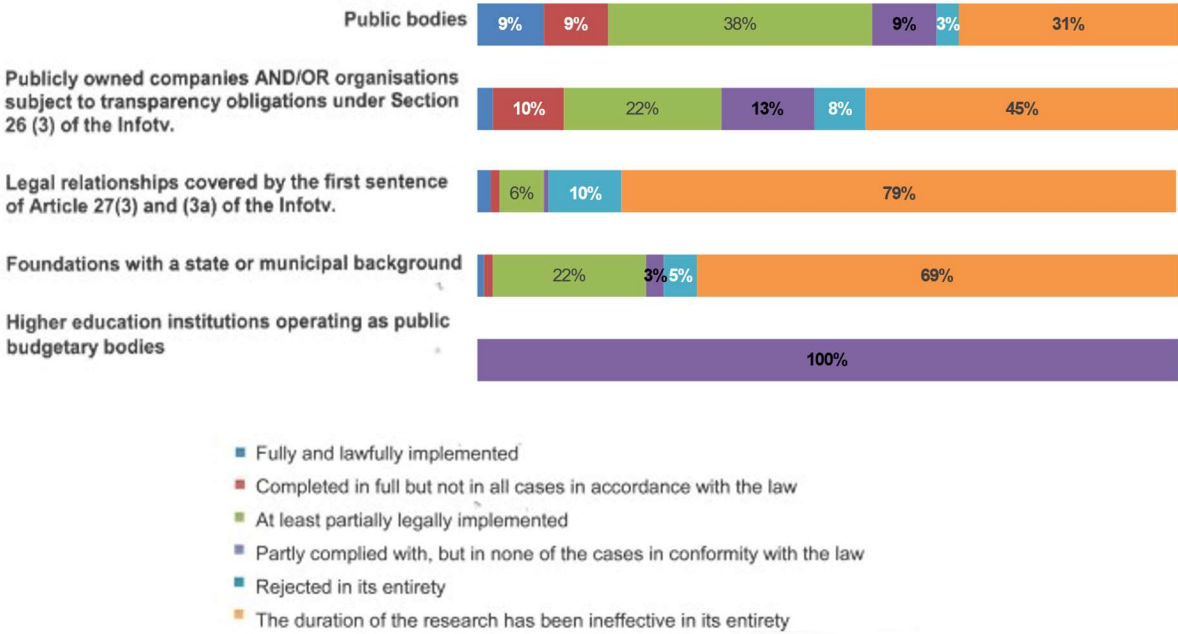
6% of organizations complied with the data request in full, but not always in accordance with the law. 19% complied at least partially in accordance with the law. A further 8% of organizations partially complied with the data request, but in none of the cases in accordance with the law. **7% of the organizations refused to answer the data request in full.**

The survey period passed unsuccessfully for the vast majority of organizations, **58%, with regard to all data requests.**

In summary, as the website analyses showed and the trial data requests confirmed, there is a clear lack of aspiration to transparency among this target group, which may be due to issues of attitude but also, perhaps in most cases, to a lack of knowledge.

Figure 23: Results of Trial Data Requests by Organ Type

Results of trial data request by type s of organ



To conclude this chapter, it is also worth looking at the breakdown of the results of the trial data requests by organ type. Here, **public bodies performed best**, but only 9% of them complied in full according to the law, and a further 9% complied in full but not always in accordance with the law.

Publicly owned companies and/or organizations subject to the transparency obligation under Section 26 (3) of the Info Act also performed better than the average, while the proportion of total refusals was significantly higher among legal relations subject to the first sentence of Section 27 (3) and (3a) of the Info Act and foundations with a state or local-government background.

Higher-education institutions operating as state budget organs (ELTE and BME) partially complied with the data requests but none of them in accordance with the law.

5.2.3 Findings of the Online Questionnaire Survey

The aim of the online questionnaire was to identify the experiences and challenges with publication obligations perceived by data controllers—in this case, non-public-administration organs—subject to publication obligations. The online questionnaire consisted of mostly closed and a small number of open, totalling more than 70 questions.

The online questionnaire data collection required a minimum of 1,000 valid, analyzable questionnaires to be completed by the data controllers, ensuring representativeness by BFC code, region, and NACE code. The total number of direct and indirect mailings¹⁶ was 8555, of which 4617 were direct and 3938 indirect¹⁷.

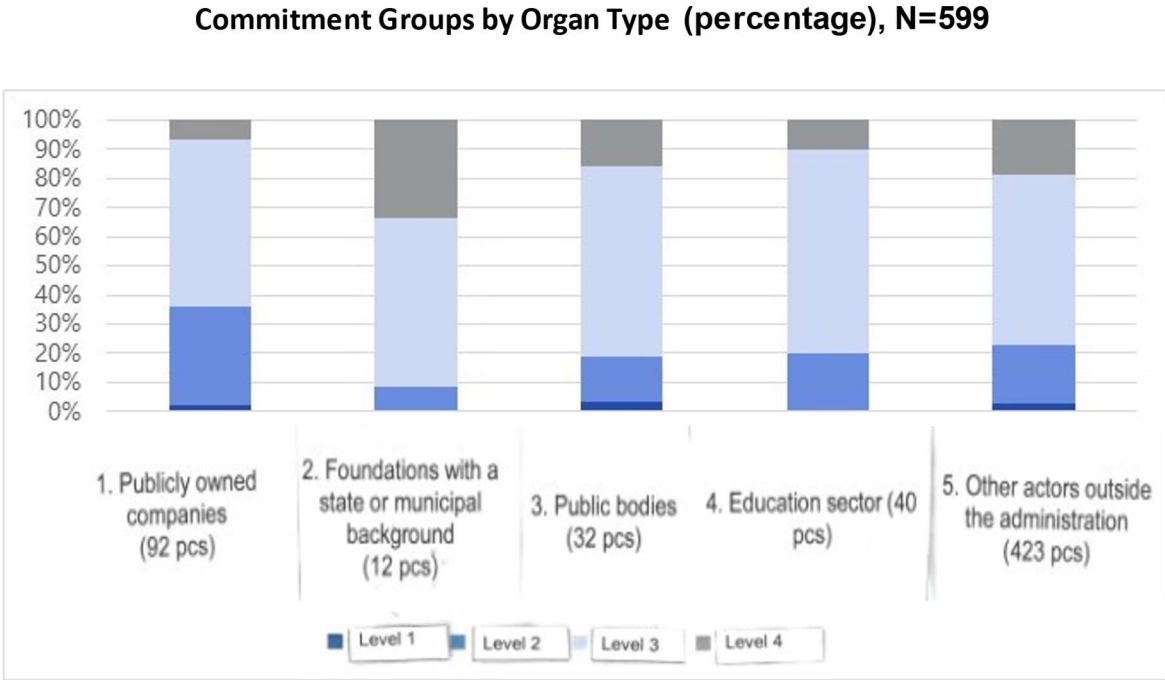
Overall, it can be said that the willingness to respond was very low, as many organizations in this target group do not even consider themselves to be subject to the Info Act, which was also reflected in the analysis of attitudes.

In the case of this measurement toll, the graph produced is based only on full completions.

¹⁶ Indirect completion means that if no public e-mail address was available for a target organization, the questionnaire was sent to the superior organ or maintainer, with the researchers' cooperation being requested in forwarding it to the relevant person.

¹⁷ The online questionnaire survey was conducted between 26 October 2021 and 23 January 2022. Data collection was closed when the number of completed questionnaires reached 1000.

Figure 7: Commitment Groups by Organ Type N=599



In the case of the questionnaire survey, the "engagement" of respondents is also shown by the fact that only a much larger sample (around 4-5 times) than planned could deliver the required number of elements.

5.3 PROPOSALS TO IMPROVE THE TRANSPARENCY FOR NON-PUBLIC-ADMINISTRATION ORGANS SUBJECT TO PUBLICATION OBLIGATION

The research was carried out on the basis of the documents described in subsection 3.2.3 of this document. Of the many research proposals made, only the most important are highlighted below.

5.3.1 (Self-)Identification of the Obligated Subjects

The following two hypotheses related to the research sought to answer the question of where *entities of the target group surveyed* classify themselves within the range of those subject to freedom-of-information obligations: at least a quarter of the entities of the target group contest that they are organs subject to publication obligations, while this proportion is at least 50% for professional associations (H7.1). The majority of respondents also believe that the underlying problems can be attributed to the lack of a comprehensive and all-inclusive registration of organs performing public duties and legal entities processing data of public interest (H7.2). Both hypotheses were partially confirmed. The website analyses found no publication in almost two thirds of the organs surveyed at all, while, in the trial data requests, almost 70% of the organs sampled either refused the data request or did not reply. The proportion of the latter was close to 60% in the total sample. Among the reasons given for rejection, 1 organization stated it was not the data controller for the data requested. Most organizations—200, i.e. 20% of the sample—rejected the data request on the grounds of lack of data. Although the respondents of the questionnaire did not identify the problem concerned as a priority issue, it is noteworthy that among the legal entities, the proportion of total refusals was significantly higher than average for legal relationships subject to the first sentence of Section 27 (3) and (3a) of the Info Act and for foundations with a state or local-government background (79% and 69% respectively). In the course of the in-depth interviews, some organizations indicated that a comprehensive and detailed list would be helpful in resolving the contentious issue of which organizations clearly fall among organs performing public duties.

In practice, it is often difficult to identify the organizations and persons subject obligations relating to the disclosure of data of public interest. In the case of organizations (companies, NGOs, etc.) that receive

state support or otherwise, through the use of public funds, come into contact with the state budget, the requirement to publish relevant data can be directly traced back to the rule in Article 39 (1) of the Fundamental Law requiring transparency of the activity using the support, and to the first sentence of paragraph (2), according to which all organizations managing public funds are obliged to account publicly for their management of public funds. Conceptually, it is more appropriate to include in one provision all the organs or persons obliged to provide information. **The introduction of the category of organizations "processing data of public interest and data accessible on public interest grounds" is recommended.**¹⁸

The provisions of the Info Act should be brought in line with the regulatory regime of publicly owned companies because the responses to the online questionnaire of the research generally expressed the problem that several provisions of the Info Act "simply do not make sense" or "are not enforceable at all" in their context—as they are typically designed for public-administration organs.

The group of entities falling under Section 26 (3) of the Info Act—i.e. mandatory public service providers and monopoly service providers—should thus be included in the concept of organs performing a public duties.¹⁹ A constitutional—and also publicity-friendly—solution would be to shift the regulatory focus of paragraph (3) from data accessible on public interest grounds to the organ performing public duties.²⁰

5.3.2 The Collision of Various Types of Secrets as Limitation to Freedom of Information

According to the target entities, the separation of market and non-market activities in relation to trade secrets is an ongoing problem for publicly owned companies, mainly state-owned companies (H2.10).

The results of the evaluation of the online questionnaire show that organizations (not only state-owned companies) have difficulties in demarcating trade secrets in the context of requests for data of public interest (82 respondents confirmed that they had such difficulties). In the areas of uncertainty, it was also indicated that demarcation is problematic as to when and under what conditions different types of secrecy and publicity restrictions apply (75 confirmed answers). Both answers were in the middle range, meaning this not the cause of much headache, but it is still an important factor in fulfilling freedom-of-information obligations.

A number of difficulties of legal interpretation arise in relation to the applicability of types of secrecy and publicity restrictions limiting the freedom of information (H7.5). Overall, the hypothesis proved to be partially true: the seventh most frequently mentioned uncertainty factor (75 affirmative answers in total) was when and under which conditions different types of secrecy and publicity restrictions (e.g. trade secrets). In the in-depth interviews, however, it was more common for publicly owned companies involved also in market activities and organizations active in the financial sector to indicate difficulties and uncertainties in this respect. In particular, entities in the target group have difficulties in interpreting the how the types of secrecy connected to the protection of personal data, trade secrets, and decision making relate to the fundamental right to freedom of information (H7.6). Both in the online questionnaire and during the in-depth interviews, organizations indicated that they have particular problems in interpreting the relationship between trade secrets and the fundamental right to freedom of information. In the in-depth interviews, this problem was mainly mentioned by publicly owned companies also carrying out market activities. Respondents to the online questionnaire ranked the problem in the first third of the ranking.

The results of the research therefore confirm the difficulty of establishing the exact relationship between *trade secrets and the various other types of secret and the publicity of data of public interest*. The dilemma of how to treat and refer to a third party's trade secret has generally arisen. In this context, **considering a solution is therefore recommended whereby, in the case of contracts that contain data of public interest and involve the use of public funds, or the publication of which is**

¹⁸ See point 6.3.9. in the research report entitled *Research 4: Corrective Mechanisms*.

¹⁹ This solution would also would be in line with the terminology of the Tromsø Convention.

²⁰ In this case, mandatory public service providers and universal service providers—in terms of the protection of both the personal data they process and freedom of information—would be treated in the same way as public companies qualifying as organs performing public duties, since currently there is no constitutional basis for the distinction between the two categories of legal entities resulting from the wording of Section 26 of the Privacy Act.

mandatory for organs performing public duties, the parties would be required by law to indicate in advance the parts or provisions subject to trade secrecy.

It should also be included in a regulation that an **organization entering into a financial or business relationship with an organization processing data of public interest *may prohibit the disclosure of data classified and separately held as trade secrets (including know-how) at the time the business relationship is established, with the following proviso:***²¹

- data classified as trade secrets may contain only information the disclosure of which *would cause disproportionate harm to the business activity of the entity entering into the business relationship;*
- the entity entering into a business relationship *must attach to the separate document classified as a trade secret a statement of reasons explaining in detail why and how disclosure of the information or data would cause it disproportionate harm.* Such justification should recommendably be made publicly available.

This proposed solution would "force" controllers of data of public interest and their business partners to consider in advance, at the time of contracting, which contractual data could/should be classified as trade secrets (the principle of "freedom of information by design").

In this context, the **amendment of the Info Act is also recommended in order to clarify the liability of the classifier and the data controller, as well as the procedure to be followed when the trade secret falls under Section 27 (3) of the Info Act and comes into the possession of a data controller other than the classifier.** In the case of a trade secret of a third party, for the application of Section 27 (3) of the Info Act when the data controller comes into the possession of a trade secret of a third party, the issuing of a recommendation of general nature for a preliminary procedure should be considered.

Helping to interpret the law is particularly important in resolving the tension between trade secrets of publicly owned companies and freedom of information, in drawing the line between market and non-market activities of such companies, and in defining the concept of environmental emission data.

Legal and Notarial Privilege

It is problematic that while tax secrecy, at least arguably, is connected to Section 27 (2) (e) of the Info Act, most professional secrets—and here the institutions of legal and notarial privilege are particularly interesting—are not connected to Section 27 (2) of the Info Act at all. The addition of a **provision on professional secrets to Article 27(2) of the Info Act is recommended.**

Money and Capital Market Secrecy

In the context of the regulatory anomalies of the institutions of financial and capital market secrecy, the researchers pointed out that in the case of—as it happens, publicly-owned—money and capital market operators performing public duties (such as EXIMBANK, too), which typically carry out non-classical commercial banking activities, the treatment of money and capital market secrecy as an absolute limit raises serious constitutional concerns. The question to be answered is in fact whether money and capital market secrets can be construed as sectoral trade secrets or as an absolute barrier as authorized by Article 27 (2) (e) of the Info Act. "Central financial policy" is an even more volatile link in the case of money and capital market secrets than in the case of tax secrets, since by their very nature these secrets shield private-law relationships. The most "freedom of information-friendly" solution would be to **add a sentence to Article 27 (3) of the Info Act stating that *banking, securities and insurance secrets regulated by separate laws are to be regarded as business secrets.***

5.3.3 Legal Consequences

According to hypothesis H7.10, *compliance with freedom-of-information requirements mostly lags behind due to a lack of control and sanction possibilities.* Overall, the hypothesis proved to be partially

²¹ An illustrative or taxative list could be drawn up in legislation of what can and cannot be considered a trade secret.

true: although consultations with requesting parties confirmed that the current control tools are not sufficient to enforce adequate compliance, the results of the measurement tools corroborated that both organizations and citizens would prefer education rather than sanctions. The external verifiability of freedom-of-information violations is limited, and the sanctions applied by the NAIH do not have a deterring or enforcing effect (H7.12). Based on the results of the requesting-party questionnaire, the requesting-party side perceives that the NAIH procedures do not have a sufficient enforcement effect. This was confirmed by the focus group interviews, but most respondents were positive about the work done by the NAIH.

The system of sanctions in the regulation of active freedom of information, publication obligation, is not well developed. The researchers pointed out that while there is criminal-law support for the rules of passive freedom of information and trade secrets (Sections 220 and 418 of the Criminal Code), there is essentially no such support for active freedom of information—Article 220 (1) (b)–(c) of the Criminal Code are not considered as such.

Penalising non-compliance with the publication obligation, the application of soft and hard legal consequences contributes to the compliance and orientation of organizations subject to publication obligation.

As a soft sanction and as a means of orienting data controllers, the NAIH could publish its decision in a freedom-of-information procedure by disclosing the identity of the data controller. It would be also recommendable for the NAIH to prepare and publish information and statistics on which organs excel ("whitelist") or fall short ("blacklist") in fulfilling data requests. In this context, the extension of the obligation for data controllers to provide information to the NAIH is also recommended; **the NAIH should inform the public about the data controllers it considers to be the best and the least good performers in the area of freedom of information.**

Ensuring greater publicity for non-performance or under-performance may include the following:

- mandatory publication of the results of NAIH investigations, reports, court cases on the website of the data controller;
- publication of requests for data of public interest and responses to them (except for data accessible on public interest grounds) on a central platform;
- (mandatory) publication of requests for data of public interest and data disclosures on data controller websites;
- the possible creation and communication of a "blacklist" and a "whitelist".

Positive Affirmation of Good Practices:

- Use of good practice reward solutions linked to performance assessment (e.g. additional scores in tenders).

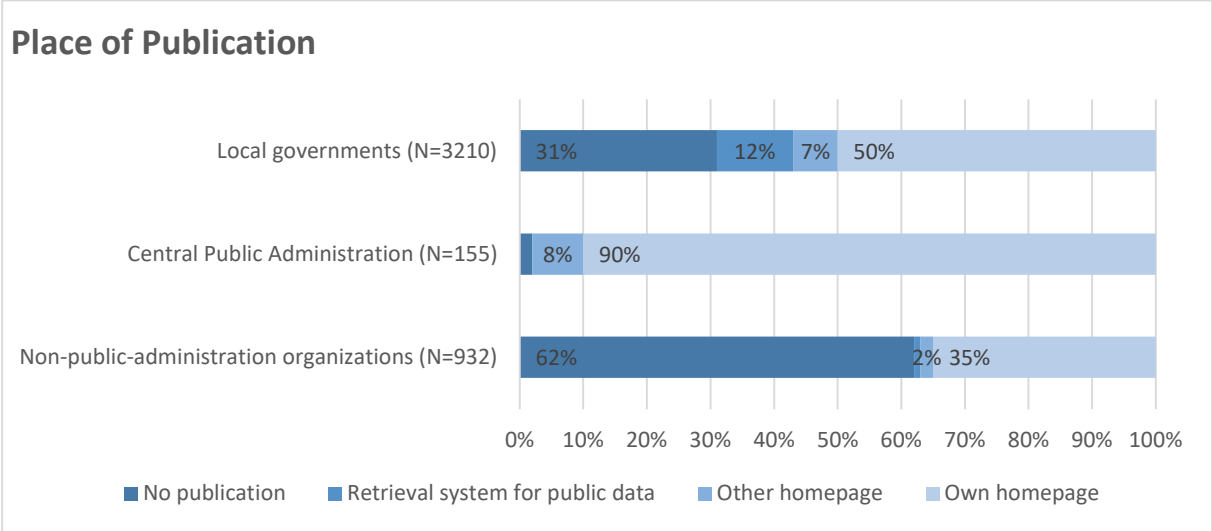
Other Means Enforcing Rights: as enforcing law-abiding behaviour does not necessarily mean inspections, fines and penalties, promoting and encouraging **self-assessments**, increasing publicity of non-performance, communicating good and bad practices can also act as a deterrent for a significant number of data controllers; and positive affirmation (benefits linked to good practice) can also help to improve practices.

Supporting and Encouraging Self-auditing: the attitude of data controllers towards freedom of information would be significantly improved if owner-managers would also take stock of the fulfilment of the transparency obligations, commitments, and practices of their companies.

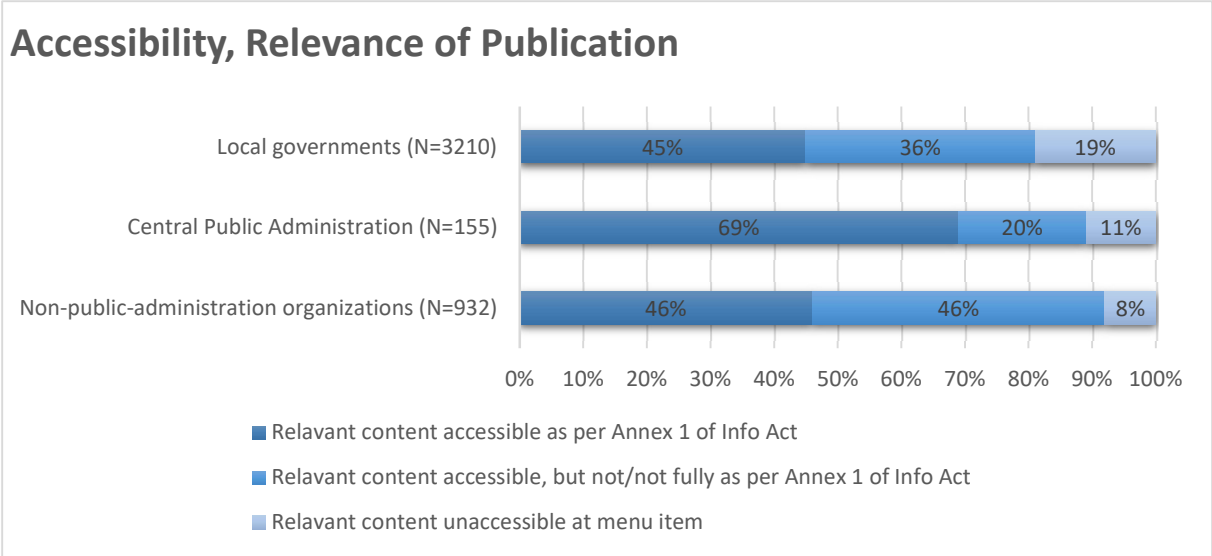
5.4 NON-PUBLIC-ADMINISTRATION ACTORS SUBJECT TO PUBLICATION OBLIGATION COMPARED TO THE OTHER TWO TARGET GROUPS

The research in the three main target areas (local governments, central public-administration actors and non-public-administration actors subject publication obligation) followed the same logic and methodology, which allowed for a comparison of the research results, the most important of which are

presented below, focusing on the target group of non-public-administration actors subject to publication obligation.

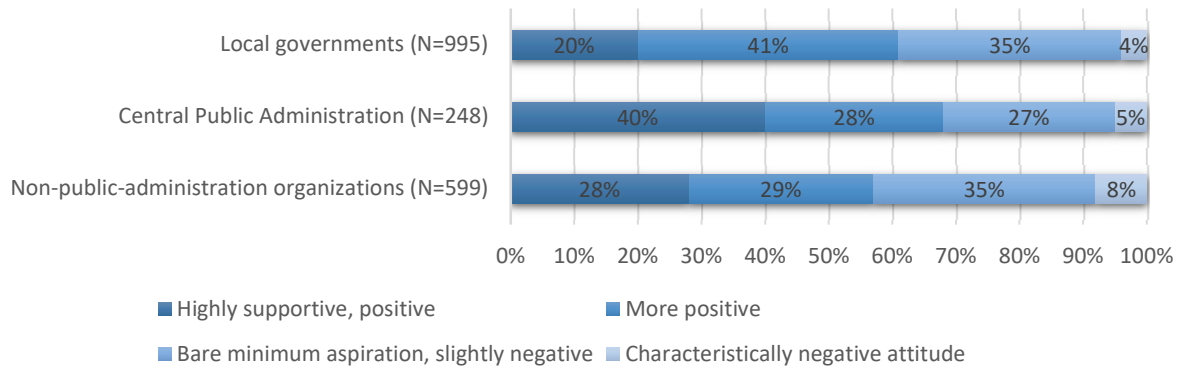


Within the target group, the highest negative result was that 62% did not publish any data accessible on public interest grounds. The remaining 38% of the target group—the organs are aware of their statuses and thus their obligations—performed with a higher standard: 92% of the law-abiding organs publish their data accessible on public interest grounds on their own websites.



There were also serious problems in meeting the legal requirements among the first two target groups. The content of the published data was also examined against the minimum publication requirements under the law, with none of the target groups performing 100%—i.e. lawfully. The backmarker in the research was group of non-public-administration organs subject publication obligation: **more than half of them failed to meet the minimum legal requirements.**

Organization Attitude



In the survey of attitudes, non-public-administration organs subject publication obligation were the least positive in their perception of the role of freedom of information, and had the highest proportion of typically negative attitudes.

6 THE FINDINGS OF RESEARCH 4 ON CORRECTIVE MECHANISMS

6.1 BRIEF DESCRIPTION OF THE RESEARCH

The focus of the Project 4 Research was to examine the impact and functioning of the so-called corrective mechanisms from the perspective of enforcing freedom of information. The **research therefore focused on the functioning and practice of the NAIH, the courts, and the Constitutional Court, given that these are the law enforcement bodies of the state that are of fundamental and paramount importance in terms of requests to access data of public interest.** The other major unit of the research was the other actors who also contribute to making data of public interest as widely available as possible, and who induce or compel data controllers to publish data of public interest. This includes the press, certain civil society organizations, members of parliament, members of the European Parliament, and local government representatives.

Therefore, the research was based on the examination of the above-mentioned target groups' materials concerning the dispensation of justice, the processing of information materials and the analysis of legislation in force, the identification of related problems, and the development and consideration of alternative solutions.

The purpose and role of the research in relation to the target group was as follows:

- The research included all procedures, corrective methods to compel data controllers to publish data of public interest and data accessible on public interest grounds if the conditions are met. The research therefore examined the impact—and its enhancement—on the freedom of information of persons and organs with control over the target groups of the other researches, whether through providing general information, raising awareness of freedom of information or other soft, meta-judicial means.
- The aim of the research was therefore to enhance, by different means, the freedom of information in relation to the target group relevant for the corrective mechanisms; and indirectly, in relation to the activities of organs performing public duties and their relationship with the requesting party.
- Examining possible future directions, considering the positive and negative outcomes of changing the corrective mechanisms.
- With regard to the corrections of a law-enforcement nature, the research presents judicial practice as living law and the most crucial points of its interpretation of the law related to freedom of information.
- The legislative aspect of the examination covered the solutions and interpretations of legal practice that can be raised to the level of legislation.
- Further support for the fine-tuning of legislation is provided by the conclusions drawn from the analysis of foreign good practices and legal practice in the framework of international benchmark research, and by comparing these with the Hungarian legislation in force.
- On the basis of international indices, it is possible to improve Hungarian legislation with regard to aspects and legal input points concerning the situation of freedom of information in Hungary.

Due to the specific research methodology, no diagrams were produced in the framework of this research, and the related methodology, which differs in some respects from other research, is presented in Chapter 3.

6.2 RESULTS OF RESEARCH 4: HORIZONTAL PROPOSALS FOR A MORE EFFECTIVE IMPLEMENTATION OF FREEDOM OF INFORMATION

The most important findings and recommendations of Research 4 concerning the corrective mechanisms of freedom of information are organized around eight nodes, with some findings and recommendations being relevant in more than one respect. In view of their length, the main findings and related recommendations of Research 4 are set out in Annex 1 to this document, indicating the relevant detailed points of the report in relation to each finding and recommendation (the numbers in brackets are thus indicated in accordance with the table in *Annex 1: Main Findings and Recommendations of Research 4*, which sets them out in further detail):

1. A Change of Attitude

Among the changes in approach that were deemed necessary, the following were also formulated:

- freedom of information as civic education should be included in school curricula (4.);
- NAIH should also prioritize its information and education activities on freedom of information (4, 13, 26 and 27);
- the obligation of cooperation and information provision by to the data controller should be regulated in further detail and to increase the effectiveness, the rules on proactive publication should be amended, and principles should be laid down in regulation (4., 6.);
- the introduction and use of self-assessment should be promoted for organizations processing data of public interest;
- data of public interest must be processed in accordance with the principle of freedom of information by design.

2. Legislative Amendments

However, alongside the change of attitude, it is also justified to change the legal framework, from rethinking the need to maintain the category of "data accessible on public interest grounds" to laying down principles in regulation (see particularly Annex 1, 1, 2, 3, 5, 6 and the "Executive Report" produced as a result of the Project).

3. Information Officer

Also in the context of the change of attitude in relation to freedom of information and the amendment of the legal framework, the appointment of an information officer would be most important in increasing the effectiveness of the implementation of freedom of information in the internal organizational structure and activities of data controllers (8, 9).

4. Proactive Publication

The findings and proposals in the context of proactive publication are also partly related to the findings and proposals concerning the internal relations of data controllers. The way to make freedom of information more effective is not to broaden the scope of information available but to make the information that is actually relevant as accessible and reachable as possible—in line with the "smart publicity" approach rather than the "widest possible publicity" approach (10, 11, 12, 13).

5. Individual Data Requests

In the context of the findings and proposals on individual data requests, it is also necessary to refer back to the findings and proposals on the change of attitude and the legal framework, in particular the declaration of the duty to cooperate and the principles governing the relationship between requesting parties and data controllers. This includes the proposal concerning trade secrets and the proposal to regulate the consequences of **manifest unreasonableness** on the part of the requesting party.

Research 4 did not identify any significant need for changes in the time limits for the fulfilment of data requests and the reimbursement of costs, but this does not exclude regulatory changes to increase the effectiveness of freedom of information (6, 14, 15, 16, 17, 18).

6. Court Proceedings

In this regard, Research 4 formulated several findings and proposals in relation to both the Info Act and Act CXXX of 2016 on the Code of Civil Procedure (hereinafter: the CCP), above all to facilitate the quickest possible conclusion of lawsuits, as well as to create the possibility for NGOs to bring public-interest litigation (4, 19, 20, 21).

The specific proposals for amendments to the Info Act and the Civil Code formulated by Research 4 are summarized in Chapter 7 of the comprehensive research report of Research 4.

7. The NAIH

The findings and proposals cover several issues: the role of the NAIH in changing the attitude, the need for more pronounced mediation activities, and in some cases the consideration of introducing a freedom-of-information authority procedure (13, 22-30).

8. NGOs and the Press

Research 4 paid particular attention to the role of NGOs and the press, while noting that there is no need to grant specific additional rights to the press and NGOs in relation to individual data requests, but, in the case of publication, creating the possibility for NGOs to bring public interest actions in case of breach of publication obligation is recommended. In addition, and also in relation to the proposals directly affecting the NAIH, Research 4 proposes the institutionalization of cooperation between the NAIH and NGOs on freedom of information and to strengthen links (7, 30).

6.2.1 Conceptual Conclusions of the Research

A. The way to make freedom of information more effective is not to increase the amount of information available but to make the information that is actually relevant more easily accessible and known. Thus, the research suggests an approach based on the "smart publicity" approach rather than the "widest possible publicity" approach, and the proposals are largely formulated in line with this approach.

The main way of putting the "smart publicity" approach (which does not reduce the existing level of freedom of information) into practice is to strengthen the proactive publication obligation, by reducing the scope of information to be published to only relevant content, while, at the same time, broadening the range of organizations obliged to publish information and, in the future, making it possible to sanction non-compliance or enforce compliance with proactive obligations.

Similarly, a more precise framework for cooperation between requesting parties and data controllers, taking into account the constitutional requirements of bona fide, also aims at achieving "smart publicity".

B. The NAIH currently also seeks to act as a mediator between the parties in its investigations and consultations, for example by providing support for the correct interpretation and application of the law, or, when investigating cases related to the reimbursement of costs, by calling the attention of data controllers to the possibilities of making the fulfilment of data requests more cost-effective. Research 4 considers that these activities of the NAIH should definitely be continued. While Research 4 does not consider that there is a case for giving the NAIH a fully formalized mediation mandate, it is worth considering that the legislator should provide a more explicit framework for the NAIH's mediation activities in the law than is currently the case.

C. In order to make freedom of information more effective, it is not necessarily sufficient to use the "soft" instruments currently available, but, in some cases, it is also necessary to create the possibility of sanctioning data controllers who fail to comply with their obligations, and the NAIH is the most effective sanctioning body in this context. In addition to strengthening authority powers, experts also consider it extremely important to include in legislation the instruments (e.g. education) needed to achieve a long-term change of attitude. This is in line with the finding of Research 4 that self-assessment, which also offers more benefits to data controllers, can improve the effectiveness of the implementation of freedom of information. Thus, the imposition of the obligation of self-assessment²² is proposed on a defined group of data controllers, i.e. the organizations obliged to appoint an information officer (these include according to the proposal, the Office of the President of the Republic, the Office of the National Assembly, the Office of the Constitutional Court, the Office of the Commissioner for Fundamental Rights, the State Audit Office, the Hungarian Academy of Sciences, the Hungarian Academy of Arts, the National Office for the Judiciary, the Prosecution Service, the central state-administration organs (with the exception of government committees), the national chambers, the capital city and county government offices, the capital city municipality, the capital district municipalities, the municipalities of cities with county rank, and the organizations processing data of public interest that employ at least 50 persons).

D. Related to the sanctioning option, the NAIH could deploy its power to impose harsh legal sanctions as an efficiency-enhancing tool in the course of NAIH investigations in cases where the organ requested by the NAIH does not comply with its obligation to provide information or cooperate; in other words, the NAIH could impose a procedural fine on the requested organ in case of breach of the obligation to provide information or cooperate. It is for the legislator to establish the framework and detailed rules for this possibility.

E. Lastly, it is not advisable to adopt solutions that completely break with established practice; rather, it is better to "fine-tune" existing legal solutions in order to increase efficiency. Thus, for example, although the research suggests that it would be doctrinally better to introduce the administrative court route for actions for the publication of data of public interest, this would risk rendering the subsequent referencing of the essentially constitutional legal practice developed by the civil courts over the past twenty years uncertain, and would thus lead to legal uncertainty rather than to increased efficiency.

It should be emphasized that according to the findings of the Research 4, proposals arose on the side of requesting parties in relation to the shortest possible timeframe for the conclusion of the lawsuits for the publication of data of public interest, given that in many cases the request for data of public interest loses its relevance with the passage of time, and the importance of the data of public interest and accessing it fades. In this context, Research 4 proposed amendments to both the Info Act and the Code of Civil Procedure, stating that the detailed regulation is a legislative task.

The proposals based on the results of Research 4 are therefore typically aimed at improving current legislation and practice, without seeking to change them "drastically". There is one notable exception to this: among the research proposals listed in Annex 1, number 3 raises the need to remove the concept of data accessible on public interest grounds from the legislation, a proposal that was consistently rejected by the NAIH.

²² It should be noted that the Project produced a "compliance" guide to support self-assessment (see subsection 8.1.3), which will be made available electronically to all data controllers on the Freedom of Information Portal after the closure of the Project (see subsection 8.4).

7 FURTHER PROJECT OUTCOMES

The following chapter details the other outputs, deliverables, and activities of the Project that supported the implementation of the research:

- guidelines, recommendations;
- events and professional forums supporting the implementation of research activities;
- an online information portal supporting freedom of information;
- a compendium of international good practices;
- complementary activities and studies.

7.1 GUIDES, RECOMMENDATIONS AND STUDIES

During the design and implementation of the project, the main objective was to produce outputs that describe or present the processes related to the enforcement of freedom of information in a way that is easily usable and understandable by the target groups of the project, based on the results of the research.

In order to achieve this goal, under the professional guidance of the NAIH, the following outputs were produced within the framework of the Project:

8Figure 9 Recommendations and Guides Produced During the Project



7.1.1 *Transparency Manual*

The Transparency Manual describes the rights and obligations related to freedom of information as a fundamental right and their interconnected system. Access to data of public interest is also essential for transparency and the constitutionally protected freedom of expression and opinion. However, the right to freedom of expression can only be exercised if citizens have access to relevant information, most often concerning a public authority or an organization using public money, or an organ /organization in the possession of such.

After the regime change, Hungary sought to develop legislation that would protect citizens' personal autonomy and privacy as fully as possible, while ensuring a high degree of transparency in state power. The aim was to ensure that citizens' rights in relation to their personal data—i.e. the right of informational self-determination—are exercised as widely as possible, and that the state power has access to as little of their private sphere as possible. Conversely, state power must operate transparently, which is achieved when data of public interest and data accessible on public interest grounds can be easily and freely accessed by anyone.

In addition to the above-mentioned legal provisions, the decisions of the NAIH, as well as a number of court rulings and constitutional court decisions, also play a role in defining the legal framework of the freedom of information. Together, the legislation and the practical interpretation of its provisions determine who is entitled to know what data and the obligations of the organizations holding the data. They also determine the conditions under which and the extent to which access to data of public interest can and should be restricted.

7.1.2 *How to Publish Data, or the Personal Scope the Info Act?*

It is important for the organizations concerned to be aware that they are obliged to comply with requests for data of public interest or data accessible on public interest grounds made to them; and that they may also be subject to general information and publication obligations to the public even without requests from citizens (together, these are called transparency obligations). Breaches of these obligations may lead to civil action, administrative sanctions, and, where appropriate, criminal sanctions. Therefore, if the leader and his/her staff are aware of the fact their organization performs public duties, they can prepare it to comply with transparency obligations and to operate in a publicity-friendly way, which will also increase trust in the organization. For the responsible citizen, it is just as important to know what type of information is expected from which organs on issues relating to the performance of public duties and the management of public money and public funds. Who should one make a request to and whose websites she/he can expect to find publication schemes on? Citizens can effectively control public affairs if they know exactly who they can consider to be an organ performing public duties.

How to Publish Data therefore answers the question who can be subject to the transparency obligation. The short answer is this: organs performing public duties. Indeed, the key concept of freedom of information is the organ (or person) performing a public duty. Transparency obligations are, as a general rule, imposed on the organ performing public duties. But a more complex question is: who qualifies as organ performing public duties? The key term in the definition of data of public interest (Section 3 (5) of the Info Act) refers to the organ or person performing public duties—i.e. a natural person can be the controller of data of public interest. In the latter case, however, it is better to speak of a position than a natural person. *How to Publish Data* also specifically addresses the issue of relative legal capacity.

In addition, *How to Publish Data* also addresses the question of why transparency obligations are not only imposed on state organs. The Constitution considers the property of the State and local governments as national assets (Article 38 (1)). Pursuant to Article 3 of Act CXCV of 2011 on Public Finances (Áht.), apart from state organs, local governments and national-minority self-governments, and even certain public bodies, are part of the public finances. Within the limits of the law, subjects of public finances may establish companies and foundations from national assets. The relevant laws prescribe the duties of State and local government (i.e. public duties), laws however may prescribe other public duties for other organizations or persons. The addressees of public duties may, within the limits of the law, delegate the performance of these duties to other legal entities. Agreements on the utilization of national assets may be concluded—also within the limits of the law—with private individuals

and private organizations, while state and local-government subsidies (public funds) may also be granted to private individuals and private organizations under legal titles defined by law. Responsibility for public duties, public assets and public funds is therefore shared by a much wider range of entities than narrowly defined state organs.

How to Publish Data also deals with the distinction between data of public interest and data accessible on public interest grounds, as well as the possible sanctions for breaches of law.

7.1.3 Compliance Guide to Support Self-auditing

As part of the research, a *Compliance Guide* to support self-auditing was produced, which provides a toolkit for assessing compliance with obligations relating to data of public interest and data accessible on public interest grounds. The common feature of the self-assessment tools adapted to the specificities of different states and jurisdictions is that they present not only the results of the self-assessment test but also the best practices to follow.

The starting point of the guide is that the development of good practice in relation to freedom of information is in the clear interest of the organization concerned; in addition to legal compliance, it has financial and reputational (public trust) benefits. Good publication practices have the potential to reduce the number of data requests received, while the development of internal systems to respond quickly to data requests and to ensure that data requests are efficiently fulfilled minimizes the number of freedom-of-information disputes and lawsuits. Effective communication between organs processing data of public interest and data accessible on public interest grounds and citizens, based on openness and trust, is in itself priceless.

The purpose of the freedom-of-information self-assessment is to increase the organization's knowledge of freedom of information and to move organizational culture in a positive direction—not to punish the data controller. It provides the data manager with guidelines for reviewing their information rights practices, helping to identify deficiencies and areas of good practice. Filling in a self-assessment documentation has an informative value in itself and can also provide a basis for developing action plans to improve practices.

The presentation of the self-assessment process and the accompanying filling-in guide are intended to ensure that the self-assessment can be carried out efficiently and easily, even without prior expert knowledge, and to open the door for any data controller to increase their organizational knowledge of freedom of information.

The short introductory questionnaire developed as part of the research contains a mere 10 closed questions. These will clarify whether the organization is on the liability side of freedom of information, what obligations it has, and help it to understand the basic concepts. On this basis alone, the self-assessor may be able to identify important deficiencies, and possibly obtain feedback on whether his/her organization is not subject to these obligations, or its liability is but limited.

The self-assessment can be carried out according to topics or in parts, and the valuations are also broken down by topic. This helps data controllers to achieve results with less time and effort expended, or to collect a manageable amount of systematic feedback that can be used in practice. The clear, modular system makes it easier for an organization that had previously carried out a self-assessment to find answers to questions that may arise in practice and require more detailed answers.

From December 2022, the Self-Audit Toolkit will also be available in electronic form on the NAIH's online portal supporting freedom of information.

7.1.4 Model rules for Fulfilling Requests for Data of Public Interest

The purpose of the document "Model Rules for Fulfilling Requests for Data of Public Interest" is to provide a concrete guide to the handling of requests for data of public interest.

Two versions of the model rules were developed: one for non-budgetary organs performing public duties and one for budgetary organs performing public duties. The structure is the same: the model rules address the issues that arise and standardize the process in a way that is useful in everyday practice—making users' work easier.

In addition to the model rules, templates for response letters on the process of requests for data of public interest are as follows:

- Response requesting clarification;
- Response on extension of time;
- Response determining reimbursement costs;
- Response on fulfilling a data request;
- Response on refusal to fulfil a data request.

Also included is a template form for recording requests for data of public interest and a template for the minutes to be used in cases where the request is made by inspection.

7.1.5 The Rules and Practice of Reimbursing Costs ²³

The disclosure of data of public interest subject to the payment of a fee necessarily limits the exercise of the right of access to data of public interest—if not otherwise, by increasing the time needed to obtain the data. As it is a fundamental right guaranteed by the Fundamental Law, its restriction must stand the test of constitutionality. The purpose of the guidelines is to examine whether the rules allowing for the charging of costs for exercising the right of access to data of public interest and their practical application actually meet constitutional requirements. The information material describes the legal provisions and the relevant practice of the National Authority for Data Protection and Freedom of Information, the courts and the Constitutional Court. It also examines whether the rules on the reimbursement of costs for the fulfilment of requests for data of public interest and the jurisprudence developed on the basis of these rules comply with Hungary's international legal obligations. Finally, it gives a brief overview of the solutions for the compensation of costs for accessing data of public interest in five European countries.

Taking into account the criteria developed by the NAIH and repeatedly confirmed by court rulings, data controllers are not in an easy position when they want to recover the costs of fulfilling a request for data of public interest, more specifically the labour costs related to the fulfilment. This is the main reason why the charging of costs cannot be considered as a common practice for data controllers.

7.1.6 Local-government Guide for Ensuring Freedom of Information

This guide is a practical tool, richly illustrated with legal practice and examples from the broader local-government sector, providing a brief but comprehensive overview of the obligations of local governments and other organizations involved in the exercise of local public duties in relation to the freedom of information, i.e. the publication of data of public interest and data accessible on public interest grounds.

The aim of the guide is to assist notaries, mayors, local government representatives, heads of local budgetary organs, and local-government companies and their staff in decision-making related to the publication of data, the fulfilment of data requests, or data requests to other organs.

In order to better understand the requirements, the guide summarizes the facts of a number of cases decisions of the courts and the NAIH, together with the content of the decisions taken, but without mentioning the local government concerned. The examples supplementing the legal practice descriptions use fictitious names for local governments and data controllers.

7.1.7 Matrix for Providing Data, or Who's Who in the Field of Freedom of Information?

As part of the research, "Matrix for Providing Data, or Who's Who in the Field of Freedom of Information?" was produced as a pilot document that illustrates the system through environmental data and their accessibility.

The right to information is one of the three pillars of community participation. Community participation cases start and most usually end in the same: the local communities and civil society organizations concerned usually take note of the information they receive, and have neither the resources and time nor the motivation to become involved as participants or to seek redress—even if they do not fully agree with the actions of the authorities, investors or operators. However, the right to information is in itself a

²³ For the related legislative changes see: <https://naih.hu/dontesek-informacioszabadsag-tajekoztatok-kozlemenyek?download=567:tajekoztato-a-kozerdeku-adatigennyel-osszefuggo-koltsegteritesre-vonatkozoz-szabalyok-modositasarol>

prerequisite for good governance, for transparent and accountable organs performing public duties, and, in most cases, a sufficient condition thereof.

Technically and logically, the starting point for the right to information is a high-quality, clearly structured and uncontroversial information system.

In Hungary, environmental data can be accessed under at least three legal titles: under the general, essentially constitutionally based rules on data of public interest; under the special rules on access to environmental data; or, to a more limited extent in personal and material terms, by way of administrative proceedings. As is typical of environmental law and, more generally, of so-called related rights relevant to the protection of the environment (e.g. mining law, transport law, etc.), rules on access to information are not only to be found in legal sources specifically devoted to freedom of information but also scattered among the provisions of the various substantive laws.

Information can be passive, i.e. published on request, or active, i.e. published, without request, by the authorities in some physical form: newspapers, official journals or by the usual local means but, most of all, the internet, their websites. According to the content of the environmental data, a distinction is made between environmental-status (immission) data and emissions or load (emission) data. The rules on data provision generally cover deadlines, format, costs, and certain categories of exemptions (and even sub-exemptions).

Given that accessing data of public interest, including environmental data, is not easy, the institutional context is of particular importance.

The matrix describes the constitutional right to information of public interest and the detailed legal provisions facilitating it in general information law, administrative procedural law, the general and specific parts of environmental law, and other so-called related fields of law relevant to the protection of the environment. This is followed by a brief summary of domestic legal practice on the right to information and relevant international and EU rules, with particular reference to the Aarhus Convention on Community Participation and the practice of the Aarhus Follow-up Committee.

7.1.8 Feasibility Impact Assessment to Ensure Transparency in Government

The aim of the "Feasibility Impact Assessment to Ensure Government Transparency" document prepared in the framework of the Project is to present the conceptual possibilities and options for implementation, and to compare the advantages and disadvantages of each option, in order to enable the government to make a decision on the justification for the development and the concept of implementation. It is important to note that the Project produced a mere impact assessment, which does not result in any development, or guarantee implementation.

The concept of government transparency is related to the concept of the reuse of national data assets; therefore, the feasibility study also covers the possible interfaces between the functions of the online platform to be implemented and the uniform processes of its operation. For both the reactive and the proactive orientations towards public-data provision, different sub-alternatives were formulated in terms of the full range of functionality offered, and these alternatives were paired to produce the proposed alternatives—three altogether, which are assessed against a common set of criteria. The first alternative is guided by the principle of maximum service to users of data of public interest and data accessible on public interest grounds, while the third alternative includes options that require only minor improvements to the current operation. The second alternative offers a solution "halfway" between the two, with a significant service content but at the same time a frugal solution.

7.2 INTERNATIONAL BEST PRACTICES—INTERNATIONAL BENCHMARK ANALYSIS

In order to identify and adopt international good practices, an international benchmarking analysis was carried out during the Project, the findings of which are summarized in the Compendium of International Good Practices Study (hereinafter: the Compendium Study). The **aim was to collect and analyze foreign good practices that are suitable for transposition into the Hungarian freedom-of-information framework.**

The first phase of the research reviewed the public access legislation and practices in six European countries—Estonia, Finland, Iceland, Scotland, Sweden, and Serbia. As the regulatory and practical solutions of these countries differ significantly from each other and from the situation in Hungary, it was not possible to make a standardized comparison in all respects, so the strengths and weaknesses were listed taking into account the Hungarian regulation and practice. Besides a detailed analysis and evaluation of the quality of regulation, the focus was on the effectiveness of practice.

In the second phase of the benchmark analysis, to narrow the focus of the analysis, three countries—**Estonia, Iceland and Scotland**—were selected, and a detailed country studies were prepared of them.

As a starting point for the benchmark analysis, it was important to note that **many of the legal and institutional solutions** for the accessibility of data of public interest in **Hungary are expressly strong and can be considered as good practice** that is worth preserving in the longer term, and that is itself suitable as an example for other countries' regulation. These include, among others, the low-threshold and therefore widely applicable and easily enforceable right of recourse to the courts; the disproportionate harm test in case of trade secrets as grounds for refusal; the obligation to interpret the grounds for refusal narrowly, the so-called “glass-pocket” [finance-transparency] rule; and some other elements of the general publication schemes.

Foreign best practices that are capable of further enhancing the accessibility of data of public interest without prejudice to existing solutions in the Hungarian freedom-of-information framework are considered useful.

The analyses and the Compendium confirmed the hypothesis that the Hungarian freedom-of-information framework has a number of very strong solutions, both from a regulatory and a practical point of view. However, this does not mean that access to data of public interest in Hungary is far from being flawless. The transparency performance of state power in Hungary and the availability of information on public funds can only partly be seen as dependent on regulation. For this reason, the further development of the freedom-of-information framework cannot be expected to result from the mechanical adoption of foreign regulatory solutions alone, which can be considered as progressive compared to the Hungarian one.

7.2.1 Experience from the Detailed Analyses of the Three Selected Countries

Following a preliminary overview analysis, Estonia, Scotland, and Iceland were selected through a peer coordination process, with a particular focus on the regulatory solutions worthy of adoption in Hungary. For these three countries, detailed analytical studies were carried out, and they were also the target countries for international study visits to support the benchmark analysis at empirical level; and in-depth technical interviews were conducted prior to the visits, mainly with representatives of the partner authorities.

The three countries were analyzed according to the following comparable criteria:

- the constitutional foundations of the freedom-of-information framework;
- the legal basis for access to data of public interest;
- specific rules for journalists and the media system;
- the availability of certain specific categories of data of public interest;
- the means and conditions for obtaining access to data of public interest;
- the means to enforce the right of access to data of public interest;

- the status of the supervisory body;
- the financial implications of access to data of public interest;
- the experience of the expert interviews;
- conclusions and summary.

7.2.1.1 Estonia

In relation to Estonia, the following regulatory solutions of the freedom-of-information framework were highlighted as suitable for adaptation in Hungary:

- The high rapidity of procedure. The fact that the request for data must be fulfilled within 5 working days of the filing of the request serves the fundamental right better; as does the fact that the requesting party must be invited to clarify his request within this period if this is necessary in order to provide the data.
- Estonian legislation requiring the data controller to provide transfer and assistance. In particular, it would be important to transpose the rule that the data controller is obliged to transfer submitted data requests if they relate to information not processed by the data controller and the identity of the actual data controller can be established. It can also be identified as a good practice that, once a request for data has been made, the controller is under an obligation to coordinate without delay if the request is not sufficiently precise.
- In the case of publication schemes, a rule could be transposed as a good practice, according to which the publication must be accompanied by an indication of which person or organ changed the published data, when and by what means, and where the newly recorded data originate.
- In relation to the publication schemes likewise, the disclosure of information that go beyond the publicity requirement under the Hungarian freedom-of-information framework can be highlighted: for example, the descriptions of the functions of the officers, information on their remuneration; and, in particular, the list of documents that also helps the fulfilment of individual data requests.
- Significantly, it is for the controller to decide, at his or her discretion, to disclose data meant for internal use if he or she considers that disclosure or disclosure by others would not harm the interests of the state or a local government. The essentially public-interest test applied in this situation provides a balance between the publicity interest and the interest to protect information that is for some reason classified. It would also be useful to transpose this solution in Hungary because the reasons adduced by a test would have to be disclosed by the data controller in case of a rejection.
- Finally, the Estonian legislation contains an important and progressive solution in that it explicitly excludes certain categories of data from the possibility of being declared for internal use, thus ensuring publicity of these data without conditions. This kind of information minimum could serve as a model for Hungarian legislation, too.

7.2.1.2 Scotland

In relation to Scotland, the following regulatory solutions of the freedom-of-information framework were highlighted as suitable for adaptation in Hungary—emphasising the importance of the different constitutional bases:

- The Freedom of Information (Scotland) Act (FOISA) provides a clear and simple structure for the legal and institutional arrangements for access to data of public interest. This should also be a priority legal policy objective in Hungarian practice. The vast majority of requesting parties are lay citizens, therefore transparency and clarity of the rules is particularly important to ensure that the rights to access data of public interest constitute a low threshold system that is easy to enforce in practice.
- In the area of disclosure of company data, the register of ultimate business owners and people with significant control (UBO, PSC) in Scotland could also provide a new direction for Hungarian regulation, but its implementation is limited by the fact that the data contained in the register is not fully accessible, partly due to data protection requirements. The existence of this register and the fullest possible accessibility of the data provided by law can be identified as a direction for the development of Hungarian regulation.

- In the case of statistical data, the definition of legal requirements for prior access could substantially contribute to the development of the freedom-of-information framework in Hungary, insofar as government information of high social interest could be made available to citizens through the press with sufficient speed.
- For specific areas and types of data, it is worth highlighting the good practice of declarations of interests by Members of the Scottish Parliament. MPs must identify in the declaration not just the assets but all factors that influence their decisions, including, for example, visits abroad and memberships in organizations. The higher level of transparency, in particular due to the publication of the declarations, of Members of Parliament who have a fundamental influence on the functioning of the state and the use of public funds helps to achieve the objectives of the freedom-of-information framework—it is therefore recommended that this solution be transposed in Hungary.
- It is good practice that only a small proportion of the exemption rules in Scotland are absolute. However, most data requests are subject to a public-interest test for the subject matter under the exception rule, which can effectively ensure a balance between the publicity interest and the interest to protect information that is for some reason classified. The transposition of the obligation to disclose the reasons adduced by the controller when applying the public-interest test into Hungarian law would be particularly useful.
- Cases that arouse public interest in the Scottish freedom-of-information framework—discrimination against journalists in particular—highlight the need to ensure that the promotion of compliance with the requirements of the framework is an intrinsic part of Hungarian legislation and practice. This applies as much to specific regulatory areas, such as media and journalists' rights, which are key to the exercise of freedom of information, as it does to requesting party rights in general.
- A problem in the Scottish freedom-of-information framework is market actors' obfuscation of requests for data of public interest and the re-use of public data. This results in a disproportionate burden on data provision without any meaningful compensation or remuneration. It would therefore be important in Hungary, too, to draw a clear distinction between the two procedures by means of regulatory instruments in order to ensure that the publication of data of public interest is not adversely affected by the performance of re-use duties. It is proposed that data controllers should be able to carry out re-use duties on the basis of an agreement to this effect, under equal and predetermined conditions and remuneration, thus allowing them to plan their capacities in this area.
- The real value of the freedom-of-information framework in Scotland, beyond the legislative framework, lies in the embeddedness of the Information Commissioner and his excellent, open, accessible and partner-like communication. The Information Commissioner's practice is based on a broad and transparent, traceable investigation and intervention. The ombudsman-like nature of the institution differs from the organizational structure of the NAIH, which oversees the freedom-of-information framework in Hungary, but this does not mean that best practices from the ombudsman-like operation cannot be adopted to improve the authority law enforcement activities. In this context, strengthening public awareness is of particular importance. Perhaps the most important good practice in the Information Commissioner's work is the visibility of his activities. Provision-seeking stakeholders can find well-edited, simple but professionally high-quality material, information and news on the Information Commissioner's website. The Information Commissioner's investigations and interventions can be accurately tracked, the process is predictable, and the expected action is foreseeable. The researchers see this as a most important objective for the NAIH.

7.2.1.3 Iceland

The following is a list of the regulatory and practical solutions identified in the Icelandic freedom-of-information framework, which the Compendium proposes for transposition to improve the Hungarian freedom-of-information framework:

- It is good practice that under Section 15 of the Information Act that the data controller must provide the requesting party with a list of the documents at its disposal to which the request for

access is likely to relate, in order to enable the requesting party to clarify the request on this basis. This is a solution to the information asymmetry that naturally exists between requesting parties and data controllers, and one that also points to possibilities of improvement in Hungarian legislation.

- In the area of environmental data, the rule whereby the data controller publishes in advance the date of production or publication of certain data of public interest seems worth adopting, thus facilitating the fulfilment of individual data requests, and reducing the administrative burden of handling premature data requests.
- When refusing a request for data, if the refusal is based on the fact that the data of public interest are already publicly available, the exact availability of these data must be provided. In this respect, Hungarian legislation can be considered equivalent to Icelandic legislation, yet domestic practice leaves much to be desired.
- The definition of exceptions allowing the availability of pre-decision data subject to access restrictions can also be considered as good practice.
- A particularly important good practice is that in Iceland, information on the ultimate business owner can be obtained electronically through the business register.

7.2.2 Study Trips and Experiences

In parallel to the preparation of detailed country studies for the three selected countries, international study visits were also organized. In the case of **Scotland and Estonia**, the contacts and organization went smoothly. However, meeting with the Icelandic Freedom of Information Authority and the Icelandic experts invited for interviews failed to materialize; thus Iceland not become the subject of experiential examination in the Project. **Mexico was included as a third country on the shortlist** instead of Iceland.

7.2.2.1 Study Trip to Estonia

First of all, a delegation of the NAIH and the consortium supporting the implementation visited Estonia between 25–29 April 2022, where technical discussions were held with the Estonian Co-authority, the Estonian Minister of Justice and the Supreme Court, among others.

The main lessons from the technical discussions of the study visit are:

- The experience of the study tour confirmed our expectations. Representatives of the partner organizations and experts confirmed that in Estonia the general principle of public access to information is applied.
- Digitisation plays a prominent role in both passive (through requests for data) and proactive (through publication schemes) ways of accessing data of public interest.
- According to the Data Protection Supervision, there is no problem with the willingness of organs performing public duties to comply with data requests and the timely provision of explanations and clarifications does not cause any problems.
- A convincing example of proactive freedom of information is the public register of documents. In Estonia, electronic records of organs performing public duties are accessible to anyone.
- The briefing by the Minister of Justice and his colleagues also covered lobbying in Estonia, and more specifically the availability of lobbying-related data. In this context, the most notable finding was the provision of access to such data—with no binding legal requirement to do so.
- The minister underlined that a high level of publicity works because citizens in Estonia have a high level of trust in the state and journalists and the media are very active.
- One of the key lessons from the discussion with the Estonian Supreme Court was that the non-implementation of court decisions has not occurred. The court's register contains a list of judgments in freedom of information cases.

7.2.2.2 Study Trip to Mexico

The study visit to Mexico lasted from 16 to 24 June 2022, where the technical programme included a multi-day workshop with the Mexican National Authority for Transparency, Freedom of Information and Data Protection, and the delegation attended the 13th International Conference of Information Commissioners—ICIC 2022.

Mexico was chosen by the NAIH because the Mexican co-authority (INAI) is a very complex and forward-looking organization doing excellent professional work. In Mexico, transparency is seen as a counterweight to power, playing a key role in eradicating the culture of secrecy. Mexico's first freedom-of-information law was adopted 20 years ago, and it is important to note that Mexico is a world leader in this area, with its law being, second in the international ranking. Both the right of access to data of public interest and the protection of personal data are enshrined in their constitution. INAI is responsible for protecting the right of access to information at federal level and is headed by five Commissioners. Freedom of information is seen as a key right, and plays an important role in access to housing, health services, and education. The aim is to ensure that all citizens can exercise this right equally, including indigenous Mexicans in remote villages who do not have access to the internet.

The main lessons from the technical discussions of the study visit were as follows:

- A national survey on the right of access to data of public interest and the protection of personal data, aiming to assess experiences and attitudes towards freedom of information, and also measuring knowledge of regulation and institutional protection.
- The National Plan for the Socialisation of Freedom of Information (Plan), the INAI aiming to increase the number of people exercising their right to access data of public interest. For example, to show companies how they can increase their revenues by using data of public interest, and to show people how they can solve individual or community problems using data of public interest.
- Further publication objectives of the Mexican Info Act were highlighted as the standardization of the quality of the data of public interest produced, the convergence of data demand and data supply, and the creation of a National Transparency Platform (NTP). The NTP is to consolidate published data in structured databases, added value also being an aim.
- In Mexico, transparency evolved in the following stages. Generation 1: recognition of the right of access, "to know"; generation 2: focused transparency, "to solve". Focused transparency means the publication of socially useful information that helps people make better decisions and contributes to a more efficient market; generation 3: proactive transparency, "to solve collectively". Public authorities work with people (social participation) and together identify what information is needed, what it contains and how it is disseminated—and consequently solve the problems of communities.
- National Transparency Platform: the four systems of the NTP: 1) data requests (a mobile application developed for the system); 2) a system for handling appeals; 3) a system of portals for the fulfilment of publication obligations; 4) a system of communication between supervisory authorities and data managers.

7.2.2.3 Study Trip to Scotland

Finally, from 19 to 23 September 2022, the delegation had the opportunity to explore Scotland's outstanding practice in several respects. Firstly, the delegation met with experts from the University of Dundee, Centre for Freedom of Information, then with the Scottish Government's official responsible for freedom-of-information regulation, and, finally, with Daren Fritzhenry, Scottish Information Commissioner. The main conclusions of the professional consultation during the study visit are as follows:

- **Information officers employed by data controllers play a crucial role in the practical implementation of freedom of information. A typical circumstance, which also underlines the positive attitude of data controllers, is that most data controllers employ information officers even in the absence of a mandatory legal requirement to do so.**
- It was highlighted that the **Freedom of Information Act (FOISA) is almost 100% respected by the organizations subject to it.** This is so despite the fact that in many cases the publication schemes required by FOISA are not even applied. **Thus, proactive publication is driven not always by the law but, at least as importantly, by the conviction of data controllers to do so.**

- **The key regulatory objective is to revise FOISA in the light of the new requirements created by** digitization and the massive growth in **internet usage since the** adoption (2002) and entry into force (2005) of FOISA.
- It was stressed that Scotland is a fundamentally egalitarian society and that proactive publication of public data is an important component of trust in government.
- In line with the practice established by the Scottish Information Commissioner, **data controllers will provide the Information Commissioner with statistical information on data requests, fulfilments, rejections, appeals, etc. on a quarterly basis.** This is therefore not a statutory obligation, but it is nevertheless complied with as it is part of general good practice. Daren Fitzhenry explained that if a data controller happened to fail to send statistical data, and perhaps even failed to send the data when requested by the Information Commissioner, he could send a formal data request to the defaulting data controller, to which he or she would "have to respond in any case".
- **Self-auditing is in fact a routine process for all data controllers, which is carried out at set intervals.** To this end, the Information Commissioner has developed self-auditing tools in six areas: timeliness (On Time), the traceability of documents (Searching for Info), Advice & Assistance, Publishing Info, Review, and Performance Monitoring.
- If the **Information Commissioner detects bad practices by a data controller,** such as incomplete or late publication or errors in the fulfilment of data requests, **the Commissioner will primarily assist and not sanction the data controller.** As part of this process, the Commissioner will ask the data controller to reassess its own practices and, on that basis, to draw up an action plan. In more serious cases, the Commissioner audits the data controller, and ultimately issues the action plan to the data controller. If the data controller still fails to comply with the legal requirements, the Information Commissioner will issue a binding decision, which can be enforced by judicial means if necessary.
- The Information Commissioner highlighted the general observation that the requirements for access to data of public interest are met in Scotland because there is a widespread belief that FOISA has an important function and therefore its obligations must be fulfilled.

7.2.3 Experience of the Compendium of International Good Practices Study

The benchmark analysis showed that some of the good practices proposed for adoption go beyond the results that can be achieved through regulatory instruments. In Scotland for example, the sound functioning of the freedom-of-information framework is to a large extent due to two mutually reinforcing factors. On the one hand, the actors in the freedom-of-information scene (data controllers, public authorities, legislators) generally do not abuse their rights and fulfil their obligations as intended, and in the event of a breach, the bodies designated to remedy it act appropriately. The Information Commissioner for Scotland, on the other hand, offers easily accessible services to seekers of legal provisions and has, overall, developed a model of inclusive institutions. The functioning of the Freedom-of-information framework in Scotland is considered to be an essential achievement for the effective exercise of the fundamental right to access to data of public interest. The implementation of this body of law can only be influenced to a limited extent by regulatory instruments. As the Information Commissioner for Scotland underlined in his interview, the stability of the freedom-of-information framework in Scotland is not primarily due to the high quality of regulation but to the broad consensus in society that government should operate transparently. The example of Scotland also provides a lesson that a social and political environment that supports a freedom-of-information framework is as important as appropriate regulation in ensuring that data of public interest are accessible.

A similar lesson can be drawn from Estonia, where the quality of legislation on access to data of public interest is in many respects no better than in Hungary, while Estonia's freedom-of-information performance is far better than that of Hungary. In Estonia, access to data of public interest is based not only on legal requirements but on a commitment to public access and the transparency of public power that this brings. One of the most prominent examples is the general access to data on lobbying activities of public officials and public leaders, which is based on a voluntary decision by the state to do so, i.e. not on a legal provision.

The Compendium Study clearly showed that, while the fundamental right to access data of public interest can be enforced before the courts in all six countries examined in the first phase of the Project,

the court is not the dominant institutional actor in the practical implementation of this right in any of these countries. The right of access to data of public interest is exercised by information commissioners (Scotland, Serbia), parliamentary ombudsmen (Finland, Sweden) or by an authority or commission more or less independent of the government (Estonia, Iceland). In the countries analyzed, enforcement before the courts can be considered a secondary means of enforcing the fundamental right. With the exception of Scotland, where access to the courts is reserved to exceptional cases, disputes concerning access to data of public interest are dealt with by administrative courts. The prominent role of freedom-of-information authorities is also reflected in the fact that they can bring mandatory and enforceable decisions on data controllers to provide the data requested. In Hungary in contrast, the courts, including the civil courts, constitute parallel enforcement forums beside the National Authority for Data Protection and Freedom of Information (NAIH) for access to data of public interest. The specificities of the freedom-of-information legislation and practice in the countries studied clearly indicate that the best practices with a view to the development of the Hungarian institutional system can be identified primarily in the area of the powers of the freedom-of-information authority.

7.3 EVENTS AND PROFESSIONAL FORUMS SUPPORTING THE IMPLEMENTATION OF RESEARCH ACTIVITIES

The research project was supported by a series of events, workshops and conferences, which effectively connected with the project's target groups, both in the preparatory and dissemination phases, and helped to share professional work, raise awareness, and increase commitment to the topic of freedom of information.

In addition to the general presentation of the Project, the preparatory phase focused on contacting the target groups concerned and raising awareness of the Project's objectives. The promotion of the Project started with information to participants at the launch event and to the press²⁴. During implementation, the focus was on the involvement and active participation of the target groups, thus the opinions and feedback received from the target groups were used during the research process.

The professional events were primarily project-specific events, with the dual aim of involving stakeholders—the defined target groups of the research and civil society organizations—and disseminating the results of the research and the project.

During the local-government roadshow events, information was provided to stakeholders on how to ensure freedom of information and on the "Local-government Guide for Ensuring Freedom of Information", produced as part of the project. The roadshow thus aimed to support the work of data controllers, primarily local governments, in relation to freedom of information, and to instruct them on their obligations²⁵.

The most prestigious event of the Project was the two-day international professional conference²⁶ held on the subject matter of the Project, with speakers invited from home and abroad.

²⁴ <https://naih.hu/kofop-2-2-6-vekop-18-2019-00001/esemenyek/projektnyito-konferencia-2021-03-24>

²⁵ <https://naih.hu/kofop-2-2-6-vekop-18-2019-00001/esemenyek/orszagos-tajekoztato-felkeszito-roadshow-2022-majus>

²⁶ <https://naih.hu/kofop-2-2-6-vekop-18-2019-00001/esemenyek/nemzetkozi-konferencia-2022-junius-8-9>

During the implementation of the Project, the following events and professional forums supported the research, and served as professional forums for target group-specific communication:

Table 3: Project Events

| Event name | Planned implementation date | Types of event | Planned number of participants |
|--|-----------------------------|----------------|--------------------------------|
| Project launch event | March 2021 | 1 | 50 persons |
| Professional events I. | May-June 2021 | 20 | 40 persons/event |
| Professional events II. | September 2022 | | |
| Focus group interviews supporting implementation | October 2021 - January 2022 | 20 | 10-15 people/event |
| Project roadshow | May 2022 | 9 | 150 persons/event |
| International conference | June 2022 | 1 | 200 persons |
| Project Closing Event | November 2022 | 1 | 100 persons |

7.3.1 The Project Opening and Closing Event

The online launch conference of the Project took place on 24 March 2021. Due to the COVID-19 pandemic, the event was broadcast online and was watched by more than 150 viewers. Open to the press, the event was attended by representatives of the media and of the target groups who had been interested in the topic from the very beginning and who were able to listen to the speech by Dr Attila Péterfalvi, President of the NAIH; the lecture by Dr. Júlia Sziklay, Head of the Freedom of Information Department of the Authority; and the presentation by Frigyes Janza, Research Director, on the foci, methodology and main target groups of the research Project on the Freedom of Information conducted by the Consortium. The event was covered by several media. Also open to the press, the closing event of the Project took place in December 2022, with a structured presentation of the results and activities of the Project.

7.3.2 Professional Events

In the first phase of the Project, the NAIH, with the support of the Consortium experts, launched a series of workshops to pool experiences between representatives of the project's target groups and an initial discussion with target-group members on the research hypotheses identified in the first, exploratory phase of the project.

In the first technical phase in May-June 2021, the first series of (10) online events consisted of two types of event:

- Thematic focus events (3), with the participation of the following:
 - environmental data: non-governmental organizations;
 - higher education: higher-education actors;
 - publicity of tenders: resource-management organizations.
- Regional events (7 events): targeting local actors and following a similar scenario (plenary presentations and sessions on the same theme) as per region.

The 10 professional events helped the experts in professional implementation, highlighting the focal points that are of particular concern to data controllers and the discussions raising questions and issues that provided a good basis for formulating research hypotheses and for developing the framework for recommendations and proposals.

Table 4: Professional Events I

| Ssz. | Date of | Type of event | Domain name | Number of people |
|------|---------------|---------------|---|------------------|
| 1. | 20 May 2021. | Thematic | Environment and freedom of information | 63 |
| 2. | 26 May 2021. | Thematic | Higher education and freedom of information | 53 |
| 3. | 27 May 2021. | Thematic | Tenders and freedom of information | 43 |
| 4. | 1 June 2021. | Regional | North Hungary | 68 |
| 5. | 3 June 2021. | Regional | Central Hungary | 77 |
| 6. | 8 June 2021. | Regional | Central Transdanubia | 42 |
| 7. | 10 June 2021. | Regional | Northern Great Plain | 49 |
| 8. | 15 June 2021. | Regional | Western Transdanubia | 53 |
| 9. | 16 June 2021. | Regional | Southern Great Plain | 45 |
| 10. | 17 June 2021. | Regional | Southern Transdanubia | 51 |

In September 2022, the second series of (11) events was held, aiming at presenting and disseminating the results and challenges of the research Project, "*Mapping Domestic Freedom-of-information Practices and Enhancing their Effectiveness*", its legal and professional conclusions, attitude-formation objectives of its outputs, and the legislative proposals it formulated, for the following in particular:

- teachers and students at law, public administration, public service universities;
- representatives of the local governments of the City and districts of Budapest;
- representatives and delegates of the ministries;
- and the NAIH staff.

The main elements of the all-day professional events were as follows: attention-attracting introduction to the Project, including the purpose of the professional event's professional programme, the state of affairs as picture by the research, and the package of proposals to improve the effectiveness of freedom of information. Two keynote lectures were delivered during the events with a focus appropriate to the audience and target group, followed by workshops and question-and-answer sessions as follows:

- Lecture (consortium expert): the project's key findings (synthesizing, on the one hand, the research and state-of-affairs picture emerging from it, and, on the other, the resulting products and the main proposals for improvement);
- Lecture (consortium expert/NAIH staffer): target-group technical specifics; and
- workshop (NAIH and Consortium representatives): question-and-answer session with invited participants.

Table 5: Professional Events II

| Ssz. | Date | Invitees / target group | Attendance |
|-------------|-------------|---|-------------------|
| 1. | 02.09.2022 | NAIH senior staff | 42 |
| 2. | 07.09.2022 | Representatives of Hungarian Ministries | 43 |
| 3. | 08.09.2022 | Representatives of Hungarian Ministries | 40 |
| 4. | 13.09.2022 | Mayors, notaries of the City of Budapest and districts | 43 |
| 5. | 20.09.2022 | Students/teachers of the Faculty of Law and Political Sciences of the University of Debrecen | 40 |
| 6. | 22.09.2022 | Students/teachers of the Eötvös Loránd University, Pázmány Péter Catholic University, Károli Gáspár Reformed University | 42 |
| 7. | 26.09.2022 | Other university guests, other higher education staff | 40 |
| 8. | 27.09.2022 | University of Szeged, Faculty of Law and Political Sciences students/teachers | 42 |
| 9. | 28.09.2022 | National University of Public Service Faculty of Political Science and Public Administration students/teachers | 41 |
| 10. | 29.09.2022 | Students/teachers of the Faculty of Law and Political Sciences of the University of Pécs | 41 |
| 11. | 30.09.2022. | Students/teachers of Corvinus University of Budapest | 43 |

7.3.3 Project Roadshow

The dissemination activities supporting knowledge transfer during the Project included the organization of a national roadshow, which targeted local governments, heads and staff of local-government companies, and other organizations. The aim of each half-day professional programme was to support the work of data controllers, primarily local governments, in relation to freedom of information, to instruct them on their obligations, and to present and disseminate the findings of the research and the outputs of the Project. The training sessions provided participants with useful and practical knowledge on how to enforce and expand freedom of information and comply with the law.

The Project Roadshow took place between 4 and 26 May 2022, with a total of 9 events in seven regions of the country (morning and afternoon sessions in Central Hungary and Western Transdanubia), as follows:

In accordance with the programme and theme of roadshow, four presentations were delivered at each venue, as follows:

- Introductory speech on NAIH's role in ensuring freedom of information;
- Presentation on the Project's key findings;
- Ensuring transparency: a general guide to ensuring freedom of information;
- Local-government publicity: "What to do if...?" A guide for local governments on how to fulfil their freedom-of-information duties.

During the question-and-answer sessions at the end of each event, participants were able to get answers to the questions they had previously submitted to the organizers.

The speakers were the President of the NAIH, the Head, a Division-Head, and staffers of the Department of Freedom of Information, a speaker invited by the NAIH, and representatives of the Consortium.

Table 6: Project Roadshow

| Serial number | Date of | Region |
|---------------|---------------------------------------|-----------------------|
| 1-2. | 4 May 2022. 10 hours and 14 hours | Central Hungary |
| 3-4. | 10 May 2022. 10 hours and 14 hours | Western Hungary |
| 5. | 11 May 2022. | West-Central Hungary |
| 6. | 17 May 2022. | Northern Great Plain |
| 7. | 18 May 2022. | North Hungary |
| 8. | 24 May 2022. | South-Central Hungary |
| 9. | 26 May 2022. | Southern Great Plain |

7.3.4 International Conference

The aim of the two-day international conference organized in the framework of the Project was to present the national and international regulatory environment and practice of freedom of information to professionals and the wider public. Held in Phase III, the event, **33 Years: International Conference on the Domestic and International Situation of the Right to Freedom of Information—Good Practices and Conceptual Issues**, took place on 8-9 June 2022 in the Conference Room of the Office of the Commissioner for Fundamental Rights.

The two-day programme brought together renowned foreign experts and prominent representatives of freedom of information at home and abroad in a series of lectures and panel discussions, as well as presented the findings of the Authority's Freedom of Information Project. The conference programme also included presentations on international experiences and good practices, with the participation of representatives of foreign freedom-of-information authorities (notably Estonian, Lithuanian, German, and Scottish) and legal experts.

The theme of the first day focused on the history and current practice of freedom of information in Hungary, and through the lectures of invited foreign freedom-of-information experts, participants were also given an insight into international experiences and good practices. While the second day's programme consisted of panel discussions with NAIH freedom-of-information researchers and invited foreign experts, NGOs, and representatives of the press.

7.3.5 Sectoral Working Groups—NGOs in the Project

In line with the objectives of the KÖFOP, the involvement of civil society organizations was a general principle in the implementation of the Project. At several points during the implementation of the research, they were directly involved in the research activities, either as key partners or as active participants in professional forums. NGOs supported the implementation of the research with their experience in the field of freedom of information and data request practices in the country, helped to highlight the challenges as subjects of focus group interviews, and supported the research from a horizontal sectoral perspective as participants in the 11 sectoral working groups that continuously operated throughout the Project.

As horizontal professional forums, 11 sectoral working groups were set up, involving 11 key sectoral experts, covering the following areas: environment; social affairs; health; transport; education and pedagogy; social inclusion and disadvantaged target groups; policing; sport; community and tradition; arts and culture; and church affairs. Working group meetings were held with 5-10 participants—two or three per sector—to ensure efficient joint work.

The selection criteria for the NGOs involved in the sectoral working groups were as follows:

- ensuring the presence of umbrella organizations with expertise in the sector;
- inviting representatives of proposed organizations or bodies concerned with freedom-of-information issues.

Two workshops were held per sector (22 in total). The aim of the first workshop was to familiarize participants with the activities of the Project, the expected results and the focus of each research project, and to seek their views primarily from the perspective of the relevant sector, through the following thematic areas:

- General trends, knowledge of and attitudes to freedom of information and transparency;
- Transparency and freedom of information—experience, satisfaction with general information, electronic publication, requests of public interest;
- Proposals, areas for improvement.

During the second workshop, decisions, developments, and results since the first one were discussed.

Table 7: Sectoral Working Groups

| Date | Sector | Participating organizations |
|------------|---|---|
| 27.04.2021 | Environment (workshop 1) | Environmental Management and Law Association Office of the Commissioner for Fundamental Rights WWF Hungary Foundation Association of Hungarian Nature Conservationists Green Connection Association Protection Association |
| 13.10.2021 | Social Affairs Sector (workshop 1) | Hungarian Maltese Charity Association National Union of Associations of Disabled People Life for Years Budapest Association Hungarian National Association of the Blind and Visually Impaired |
| 26.10.2021 | Policing (workshop 1) | Ministry of Interior National University of Public Service Faculty of Police Sciences Hungarian Helsinki Committee Hungarian Society of Police Sciences Hungarian Security Association |
| 03.11.2021 | Health Care (workshop 1) | Hungarian Association of Postnatal District Nurses Hungarian Chamber of Health Care Professionals Hungarian National Blood Transfusion Service Independent Health Care Trade Union |
| 04.11.2021 | Transport (workshop 1) | Hungarian Transport Club Free Trade Union of Engineers and Technicians Travelling Masses Association Értékterv Ltd. National University of Public Service Faculty of Police Sciences |
| 17.11.2021 | Education (workshop 1) | Civil Platform for Public Education Higher Education Workers' Union Democratic Trade Union of Teachers |
| 01.12.2021 | Arts and Culture (workshop 1) | Music Hungary Association Independent Performing Arts Trafó Hungarian Academy of Arts |
| 07.12.2021 | Sports (workshop 1) | Transparency International Hungary Hungarian Paralympic Association Hungarian Water Polo Federation Hungarian Football Association Hungarian Handball Federation |
| 13.12.2021 | Church Affairs (workshop 1) | Ars Sacra Foundation Pázmány Péter Catholic University Apor Vilmos Catholic College John Wesley Theological College Diocesan Catholic Schools Authority, Vác Hungarian Jewish Heritage Public Foundation |
| 15.12.2021 | Social Inclusion and Disadvantaged Target Groups (workshop 1) | Hungarian Maltese Charity Association Csányi Foundation Association for the Development of Disadvantaged Villages and Communities Steps to Make them Step Public Benefit Association |

| | | |
|------------|---|--|
| 13.01.2022 | Community and Tradition (workshop 1) | Office of the National-level Self-government of Greeks in Hungary Secretariat of the Deputy Commissioner for Fundamental Rights Ombudsman for the Rights of National Minorities Budapest District V Armenian Local government National-level Self-government of Germans in Hungary |
| 22.04.2022 | Environment (workshop 2) | Environmental Management and Law Association WWF Hungary Foundation Association of Hungarian Nature Conservationists |
| 05.05.2022 | Transport (workshop 2) | Department of Public Safety, National University of Public Service Faculty of Police Science Travelling Masses Association Hungarian Traffic Club |
| 11.0.2022 | Policing (workshop 2) | National University of Public Service Faculty of Police Science Society for Civil Liberties National Civic Guard Association |
| 18.05.2022 | Health Care (workshop 2) | National Ambulance Service Hungarian Medical Chamber |
| 18.05.2022 | Education (workshop 2) | Civil Platform for Public Education |
| 19.05.2022 | Community and Tradition (workshop 2) | National-level Self-government of Germans in Hungary Atanaz Fedinecz Public Interest Museum and Exhibition Centre of Ruthenians of Hungary Secretariat of the Deputy Commissioner for Fundamental Rights Ombudsman for the Rights of National Minorities |
| 19.05.2022 | Arts and Culture (workshop 2) | Hungarian Theatre Society Atanaz Fedinecz Public Interest Museum and Exhibition Centre of Ruthenians of Hungary |
| 19.05.2022 | Social Affairs (workshop 2) | Transparency International Hungary Shelter (Oltalom) Association Budapest Association of Pensioners' Clubs and Seniors "Life for Years" Hungarian National Association of the Blind and Visually Impaired |
| 19.05.2022 | Social Inclusion and Disadvantaged Target Groups (workshop 2) | Transparency International Hungary Shelter (Oltalom) Association Csányi Foundation |
| 23.05.2022 | Church Affairs (workshop 2) | John Wesley Theological College Apor Vilmos Catholic College Diocesan Catholic Schools Authority Pázmány Péter Catholic University Hungarian Jewish Heritage Foundation |
| 25.05.2022 | Sports (workshop 2) | Hungarian Chess Federation Hungarian Olympic Committee Hungarian Rowing Federation |

Research 4 particularly focussed on NGOs, which were included in the research from two respects; on the one hand, how they inform individuals about data requests, how they assist with individual data requests, what databases, knowledge repositories, and other general-use information they created in this context. On the other hand, the presence of certain NGOs as an organized and permanent factor in the implementation of freedom of information and data requests can have a lasting and systematic influence on the functioning of other corrective mechanisms, thus significantly furthering the subsequent implementation of freedom of information.

The priority NGO partners and the form of cooperation are discussed in more detail in subsection 3.2.3 of this study.

7.4 ONLINE INFORMATION PORTAL SUPPORTING FREEDOM OF INFORMATION

The Project enabled the development a stand-alone portal with information functions on freedom of information, with the primary aim of promoting freedom of information as a fundamental right and contributing to making it as widely known among citizens as data protection, which is another pillar of the NAIH's activities.

The online Freedom of Information Portal is not a mirror image of the NAIH website but a stand-alone structured freedom-of-information knowledge base with the following features:

- Providing up-to-date information on freedom of information, with news, events and updates;
- More technical material, legislation, decisions and positions on freedom of information;
- Interactive simulations, tests and knowledge materials to help understand and apply the process of freedom of information, whether on the requesting party side or the data controller side.
- The findings of the Project (guides, recommendations, research reports) will be available for download on the portal.

8 ANNEXES

8.1 ANNEX 1 - MAIN FINDINGS AND RECOMMENDATIONS OF THE RESEARCH 4

The following suggestions were made by the experts of Research 4 (in some cases indicating the position of the NAIH regarding the proposal as presented in the preliminary discussions of Research 4).

| | Finding | Proposal |
|----|---|---|
| 1. | The definition of data of public interest needs to be amended. | <p>The amendment of the definition of data of public interest to include the processing of data related to the use of public funds and to replace the current term "organ" with "organization".</p> <p>In view of the fundamental importance of this definition, it incorporated only the changes where research led to broad consensus. In addition, however, it may be necessary to clarify the range of organs performing public duties, on which Research 4 is fully in agreement with the related findings of Research 3. However, there was no broader consensus among interviewees on the need to clarify the range of organs performing public duties, which can thus be determined on the basis of specific future research. Also, the extent to which the scope of data of public interest can be defined by either negative or positive taxonomies, which may also contribute to a more precise definition of the concept, could be the subject of a future research.</p> <p>Advantage: if adopted, the proposal could lead to more coherent legislation, thus promoting more uniform legal practice.</p> <p>Disadvantage: changes to basic concepts in the initial period may increase legal uncertainty.</p> |
| 2. | In practice, it is often difficult to identify the range of organizations and persons subject to publication obligations concerning data of public interest. | <p>The introduction of the category of organization processing data of public interest.</p> <p>Advantage: if the proposal is adopted, the legislation could become more coherent and clear.</p> <p>Disadvantage: the emergence of the concept may create legal uncertainty for a short period.</p> |
| 3. | <p>The concept of data accessible on public interest grounds with the concept of data of public interest should be merged.</p> <p>The taxonomic definition of the scope of personal data accessible on public interest grounds is uncertain, and the current legislation does not address the relationship between freedom of information and the General Data Protection Regulation.</p> | <p>In the opinion of Research 4, the circumstances that made it necessary to define the range of data accessible on public interest ground have now disappeared, and upholding it now rather leads to conceptual uncertainty. The merging of the two definitions serves both to strengthen the consistency of the Info Act with the Fundamental Law and the EU acquis.</p> <p>In the longer term, the problem of personal data accessible on public interest grounds should be specifically examined.</p> <p>As proposed, in case of activities not directly related to the use of public funds or the performance of public duties, the provisions on the publicity of data of public interest should not apply.</p> |
| 4. | The majority of citizens find the issue of freedom of information as alien, and have no adequate | <p>A change of attitude requires the following:</p> <ul style="list-style-type: none"> • incorporation of freedom of information into public education; |

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| | <p>knowledge about it; a change of attitude towards freedom of information on the part of potential data controllers is therefore essential, but this can only bring results in the long term. At the same time, a wider promotion of the right to access data of public interest and its integration into public awareness can contribute to the effectiveness of data requests by increasing the level of awareness of requesting parties.</p> | <ul style="list-style-type: none"> the NAIH should prioritize its information and education activities related to freedom of information, in the framework of which, for example, it should publish more accessible materials in addition to the professional materials, and that abstracts and summaries should be prepared in connection therewith; the obligation to cooperate and provide information for data controllers should be regulated in further detail, but the amendment of the rules on proactive publication (including the possibility for NGOs to bring public-interest litigation) is also relevant here. |
| 5. | <p>At the moment, the basis for the widespread implementation of freedom of information can only be the relevant legislation, as a change of attitude can only be achieved in the longer term.</p> | <p>Corrections to several aspects of the current legislation to improve the effectiveness of the freedom of information are needed.</p> |
| 6. | <p>Principles can ensure the unity of regulation, filter out dogmatic contradictions, and play a prominent role in the application of law.</p> | <p>The introduction of the following principles for the freedom of information as a whole is needed:</p> <ul style="list-style-type: none"> the principle of freedom of information by design and default data principle principle of publicity principle of easily accessible information the principle of immediate provision of information <p>The introduction of the following additional principles for individual data requests are needed:</p> <ul style="list-style-type: none"> cooperation principle cost minimization principle the principles of good faith and reasonableness |
| 7. | <p>The press and civil society organizations have a prominent role to play in the implementation of freedom of information, but the effectiveness of their actions on freedom of information is not to be based on additional rights.</p> | <p>It does not appear necessary to grant specific additional rights to the press and civil society organizations in relation to individual requests for data, but in the case of publication, civil society organizations should have the possibility to bring public-interest actions in the event of a breach of the obligation to publish, as this could contribute to enhancing the effectiveness of freedom of information.</p> |
| 8. | <p>The knowledge of data controllers on freedom of information and the effectiveness of the enforcement of freedom of information could be</p> | <p>The appointment of an Information Officer for the most important data controllers.</p> |

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| | increased by employing a specialized person. | |
| 9. | Self-assessment, which can also bring more benefits for data controllers, can improve the effectiveness of the enforcement of freedom of information. | <p>The imposition a self-assessment obligation on a limited range of data controllers.</p> <p>Benefit: Raising awareness is a prerequisite for the practical application of the FOI by design principle, and the proposal would greatly facilitate this.</p> <p>Disadvantage: increased administrative burden for the organizations concerned that process data of public interest.</p> |
| 10. | To increase the effectiveness of freedom of information enforcement, it is necessary to increase the role of proactive publication, as this could also greatly reduce the number of lawsuits in connection with individual data requests. | The general definition of the range of organizations subject to electronic publication, obliging all organizations processing data of public interest to publish the data specified in publication schemes, with the proviso that proactive publication is mandatory for organizations doing business with organizations processing data of public interest for contracts with a value of HUF 50 million or more. |
| 11. | Reducing the amount of data to be published can help both to meet the publication obligation and improve the transparency of the data published. | Simplification and shortening of the general publication scheme and clarification of the range of data to be published in respect of management. |
| 12. | The use of soft and hard law instruments, by penalizing non-compliance with the publication obligation, contribute to the compliance and orientation of organizations subject to publication obligations. | <p>Provision of the NAIH with hard instruments in the field of publication and empowering the NAIH to conduct freedom-of-information procedures in the following cases:</p> <ul style="list-style-type: none"> • the organ required to publish through electronic means fails to comply with its obligation to publish through electronic means upon a notice served by the NAIH in an investigation procedure, or fails to comply with the legal requirements; • an agreement between the organization subject to electronic publication as data source and the data publisher is not concluded or is concluded not in accordance with the legal requirements; • the organ subject to electronic publication fails to draw up publication rules or its publication rules do not comply with the legal requirements; • does not comply with its record-keeping obligations or does so without complying with the legal requirements. <p>As a soft sanction, the NAIH should publish its decision in a freedom-of-information authority procedure—to be developed in detail via legislation—by disclosing the identity of the data controller, and that it is already entitled under legal framework in force to publish so-called "blacklists" or even lists of data controllers positively classified.</p> |
| 13. | The effectiveness of publication, and thus of freedom of information as a whole, can be enhanced if the NAIH supports the adoption of individual publication schemes. | <p>The NAIH should play a more prominent role than it has done so far in relation to training and information on publication, including:</p> <ul style="list-style-type: none"> • to make the publication requirements widely known; • answering any questions of interpretation that arise, providing consultation; • making good practices and solutions available; • publication of guidelines. |

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| 14. | For individual data requests, the cooperation of those concerned is of paramount importance. | Regulation should be more detailed than the current one on the obligation to cooperate. |
| 15. | A specific cooperation mechanism is required for clarifying the data request submitted by the requesting party when the expected cost of fulfilling the request exceeds the level set out in the specific legislation. | As a specific form of the duty to cooperate, if the expected cost of fulfilling the request were to exceed the level set out in the specific legislation, the data controller should be obliged to consult the requesting party on the possible reduction of the data requested (and thus the level of the costs incurred). If, after having been informed by the data controller or after the consultation, the requesting party maintains his/her the data request, but the time limit for the payment of the compensation expires without result, the data controller should be entitled to refuse to fulfil the request. |
| 16. | The revision of reasons for refusal should be considered. In this context, the introduction of unlawful requests should be avoided, while the creation of a regime for unreasonable requests should be considered. | <p>In reviewing the reasons for refusal, the special position of banking secrecy should be degraded to a level comparable to that of other types of secrecy. Possible reasons for refusal should also be supplemented by information security considerations. Instead of “unlawful requests”, the category of “manifest unreasonableness” should be introduced as a reason for refusal, with the stipulation of the following in the regulation:</p> <ul style="list-style-type: none"> • the organ processing the data of public interest is not obliged to comply with the data request if the data request is unreasonable; • a request for data is unreasonable insofar as it is excessive particularly due to its repetitive nature; • a data request cannot be considered unreasonable on grounds of the scale of the data requested or the time and effort required to provide the data; • if the data controller has discretionary powers of refusal, it must carry out a balancing of interests test that is capable of properly balancing and taking into account the conflicting interests. <p>Benefit: if adopted, the proposal will reduce the burden on data controllers, while not leading to a substantial reduction in the level of freedom of information.</p> <p>Disadvantage: in the initial period, the emergence of new provisions may create uncertainty and increase the number of potential conflicts and disputes between requesting parties and data controllers.</p> |
| 17. | In several respects, there is no need to amend the rules on individual requests for data. | <p>Substantive regulatory change should be made with regard to the time limit of fulfilling a data request and cost reimbursement to the extent that the legislator provide for the deduction of labour-cost claims from the regulation.</p> <p>The rules should also be clarified as follows:</p> <ul style="list-style-type: none"> • requirement of a searchable format for the data requested, • regulation of providing information via accessing, and • the adoption of rules for the production of new data and collective lists, • the date controller's obligation to provide information; and • strengthening the guarantee role of the reasons given at the time of refusal. |
| 18. | In the case of contracts containing data of public interest, relating to the use of public funds or to the mandatory publication of data by organs performing public duties, a legal provision could be introduced requiring the parties to indicate the | <p>The regulation should include the following</p> <ul style="list-style-type: none"> • an organization that enters into a financial or business relationship with an organization that processes data of public interest may prohibit the disclosure of data classified and separately held as trade secrets (including know-how) at the time the business relationship is established; • data classified as trade secrets may contain only information the disclosure of which would cause disproportionate harm to the business activity of the entity entering into the business relationship; |

| | | |
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| | parts and provisions covered by business secrets. | <ul style="list-style-type: none"> the entity entering into a business relationship must attach to the separate document classified as a trade secret a statement of reasons explaining in detail why and how disclosure of the information or data would cause it disproportionate harm. Such justification should recommendably be made publicly available. <p>This proposed solution would "force" controllers of data of public interest and their business partners to consider in advance, at the time of contracting, which contractual data could/should be classified as trade secrets (the principle of "freedom of information by design")</p> <p>Disadvantage: increase in administrative burden associated with contracting</p> |
| 19. | There is uncertainty as to how the 30-day time limit for bringing an action is calculated in cases where the data controller's refusal is communicated to the requesting party after the 15-day time limit. | Regulation should provide that if the data controller notifies the requesting party of the rejection of the request after the expiry of the time limit for compliance, the time limit for bringing an action will start to run again from the date of the notification. |
| 20. | In determining the court hearing the case, the need to establish uniform legal practice should be taken into account. | Actions for access to data of public interest should be brought before a regional court. |
| 21. | It is of particular importance to speed up the litigation process and to strengthen the guarantee role of the reasons given at the time of refusal in court proceedings. | <p>The Info Act should stipulate the following:</p> <ul style="list-style-type: none"> in a lawsuit, the data controller may only change the reason for refusing to fulfil the request with the permission of the court if the circumstances giving rise to it come to his knowledge after the notification through no fault of his own, or if there is an overriding public interest in doing so, and there is no separate appeal against the court's order on the changeability of the reason; there is no right of review against a final judgment of the court if the court of appeal has upheld the judgment of the court of first instance. <p>The Code of Civil Procedure should likewise be supplemented with specific rules on the procedure for the publication of data of public interest in order to facilitate the speedy conduct of the procedure.</p> |
| 22. | There is no reason for the NAIH to have formalized mediation powers. | <p>The NAIH should continue the non-formalized mediation activities it currently carries out, and that the legislator might want to consider setting out a more marked framework for this in the Info Act.</p> <p>Advantage: with the mediation of the NAIH, it may be possible to manage disputes between requesting parties and data controllers without the need for official means, and the proposal may also strengthen cooperation between requesting parties and data controllers and help change attitudes.</p> <p>Disadvantage: may require more resources from the NAIH than at present.</p> |
| 23. | Strengthening the authority scope of the NAIH would help promote freedom of information. | <p>Regulation of the NAIH's Freedom-of-information authority procedure should be of limited scope only, taking into account that the incorporation of certain elements of authority scope (mainly allowing the imposition of fines) in three areas appears to be an efficiency-enhancing correction:</p> <ol style="list-style-type: none"> in the context of the publication obligation; in the case of non-compliance by the data controller with final court judgments on individual data requests; in case of NAIH investigations, if the organ requested by the NAIH fails to comply with its obligation to provide information or to cooperate (in case of breach of the obligation to provide information or to |

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| | | <p>cooperate, NAIH could impose a procedural fine on the organ requested).</p> <p>An option in this context would be to generalize the NAIH's power to apply hard legal consequences. In this case, the NAIH would also primarily act as an authority in the field of freedom of information, conduct its proceedings in accordance with the rules of General Public Administration Procedures, and be entitled to impose fines for any infringement. While such a solution could be expected to strengthen the role and weight of the NAIH, it would also have the inevitable consequence that disputes relating to public-interest requests would have to be brought before an administrative court instead of a civil court. Although this solution could be justified from a doctrinal point of view due to the constitutional and fundamental nature of freedom of information, this option seems to be too radical for preserving and coherently maintaining the results of the legal practice to date, and therefore it seems more appropriate to introduce a mixed solution, partly hard and partly soft. The proposal is also based on the fact that, in our view, the NAIH does not currently make full use of the procedural means available to it (e.g. mediation would also be possible in the investigation procedure under the current rules), so that efficiency gains could be achieved to the same extent with minor adjustments and better use of existing means.</p> <p>Benefit: If the proposal under point (c) is implemented, it would lead to an increase in the effectiveness of the NAIH's measures and thus in the level of freedom of information.</p> <p>Disadvantages: it may require more resources on the part of the NAIH than at present, and may increase the number of court cases against the NAIH.</p> |
| 24. | It is not necessary to establish the NAIH's data-disclosure powers. | Having requested and examined data and documents and subsequently determining that the data must be disclosed in part or in full, the NAIH should not be empowered to disclose requested and available data, subject to certain conditions or at its discretion. |
| 25. | The NAIH could also play a role in addressing the problems of enforcing final judgments in public interest litigation. | The NAIH should be empowered to facilitate, by means of fines, the publication of data of public interest in cases where a final court judgment has required this but the data controller has nonetheless failed to comply with the judgment, with the possibility for the NAIH to impose the fine on the data controller's manager in order to ensure the effectiveness of this measure and to ensure a sufficient separation from the general rules of enforcing court judgments. |
| 26. | The NAIH should support data controllers. | <p>In order to support data controllers, the NAIH should prepare and make available the following:</p> <ul style="list-style-type: none"> • publication and procedural guidelines proposing concrete solutions; • model rules (e.g. model publication rules); • sample forms. <p>The NAIH should make greater use of the direct contact possibilities (oral consultation, mediation) provided for by the legislation in force.</p> |
| 27. | Soft sanctions by the NAIH could also be used to orient data controllers. | <p>The NAIH should:</p> <ul style="list-style-type: none"> • prepare and publish communications and statistics about organizations which fail or are slow to fulfil data requests, including, in this context, the extension of data controllers' obligation to provide data to the NAIH, • inform the public about the data controllers it considers to be the best and worst performing in the area of freedom of information. |
| 28. | The organizational structure of the NAIH may have an impact on the performance of its tasks | The work of the President of the NAIH should be assisted by two Vice-Presidents, and that one of them should be entrusted with duties relating to the field of freedom of information, which organizational change should |

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| | related to freedom of information. | increase the prestige of freedom of information and strengthen the coordination of the performance of freedom-of-information-related tasks. |
| 29. | The flow of information within the NAIH could help it fulfil its freedom-of-information tasks more effectively. | <p>The following are recommended:</p> <ul style="list-style-type: none"> • further development of the existing newsletter (NAIH News); • making informative meetings a regular feature; • developing a training system. |
| 30. | Cooperation between the NAIH and NGOs active in the field of freedom of information would be beneficial. | The institutionalization of cooperation between the NAIH and NGOs on freedom of information and to strengthen relations, including the conclusion of cooperation agreements. |

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