

ACCESS TO INFORMATION
IN THE CONTEXT OF ACTIVITIES
OF EUROPEAN CENTRAL BANKS
AND COMPETENT AUTHORITIES

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BANCO DE **ESPAÑA**
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Abstract

This report is the outcome of a Schuman Programme project undertaken by the Banco de España, as a host institution, to study how the ESCB/SSM institutions grant access to information in the context of their activities. It takes stock of the information received through a questionnaire circulated to 37 institutions on the right to access in the context of central banks' and competent authorities' activities.

The regulation of the right of access to public information – in the European Union setting – is a national competence and, therefore, legislation may differ from one country to another. Given the cross-border cooperation among the ESCB/SSM institutions, the Banco de España considers it relevant to know how the right of access has been implemented by institutions in other European jurisdictions performing similar tasks to those performed by the Banco de España.

This report aims at sharing best practices in the means and approaches taken to access information in the context of activities of central banks and supervisory authorities in Europe. It should be seen as a starting point for initiating a deeper discussion on various practical implementation tools and methods, and a means to strengthen the right of access and make it a better tool for communication with European citizens.

Keywords: transparency, access to information, public information, right of access, freedom of information, FOI, Schuman Programme.

JEL classification: K10, K38, G20.

Resumen

El presente informe es resultado de un proyecto del Programa Schuman realizado por el Banco de España, en su condición de institución de acogida, para estudiar cómo las instituciones del SEBC/MUS garantizan el acceso a la información en el ámbito de sus actividades. El informe analiza la información recibida a través de un cuestionario distribuido a 37 instituciones sobre el derecho de acceso en el contexto de las actividades de los bancos centrales y las autoridades competentes.

La regulación del derecho de acceso a la información pública —en el ámbito de la Unión Europea— es una competencia nacional y, por tanto, la legislación suele diferir de un país a otro. Teniendo en cuenta la cooperación transfronteriza entre las instituciones del SEBC/MUS, se ha considerado relevante conocer cómo el derecho de acceso ha sido implementado por instituciones de otras jurisdicciones europeas que realizan tareas similares a las realizadas por el Banco de España.

Este informe tiene como objetivo compartir las mejores prácticas en los medios y enfoques adoptados para acceder a la información en el contexto de las actividades de los bancos centrales y las autoridades supervisoras en Europa. Debería considerarse como un punto de partida para iniciar un debate más profundo sobre los instrumentos y métodos que pueden ponerse en práctica en este ámbito, y como un medio para fortalecer el derecho de acceso y convertirlo en una herramienta que mejore la comunicación con los ciudadanos europeos.

Palabras clave: transparencia, acceso a la información, información pública, derecho de acceso, libertad de información, FOI, Programa Schuman.

Códigos JEL: K10, K38, G20.

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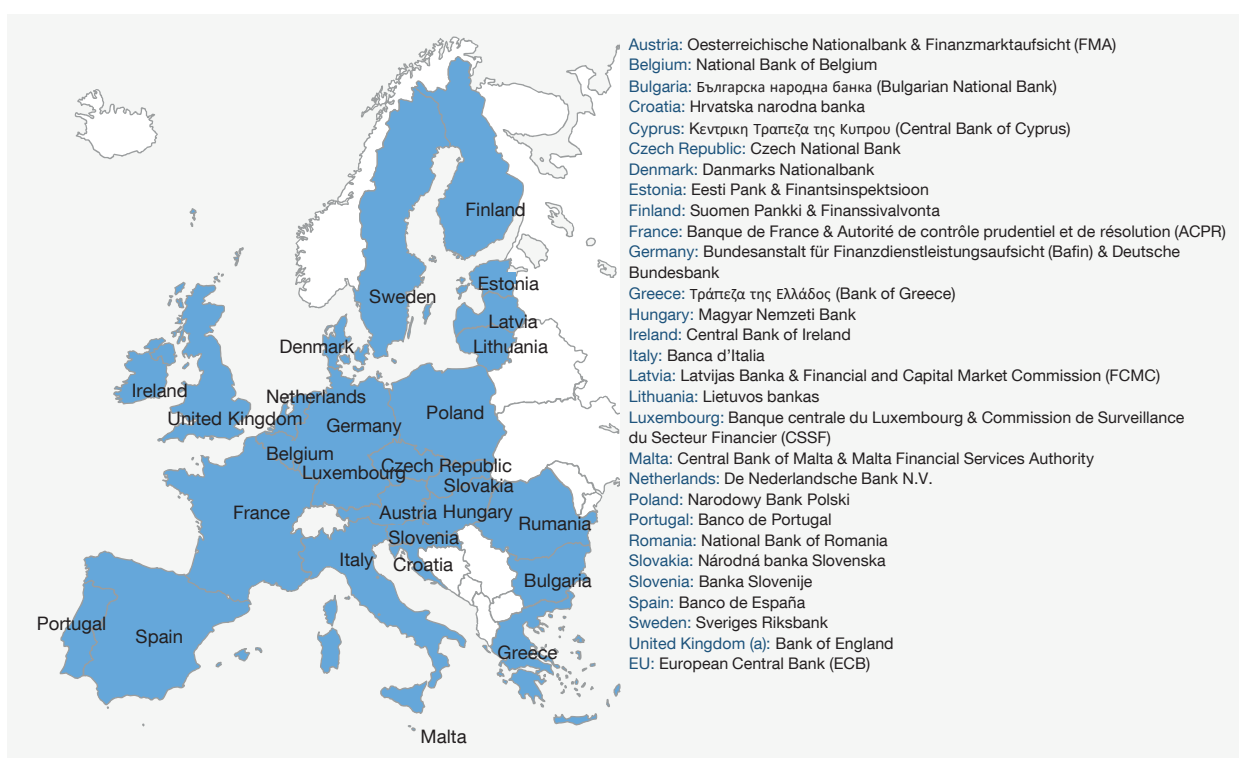
1 Introduction

This report is the outcome of a Schuman Programme project undertaken by the Banco de España to study how the ESCB/SSM institutions grant access to information in the context of their activities. The aim of this project was to study the legal frameworks for public access to ESCB/SSM institutions' documents, in particular the limits and conditions under which they may give access to citizens.

For this purpose, a questionnaire containing 51 questions was prepared.¹ To make this exercise as user-friendly as possible, almost half of the questions were drafted as single or multiple-choice. By mid-December 2019, the questionnaire was circulated –by post and email– to 37 institutions (see Figure 1): the national central banks (NCBs) and national competent authorities (NCAs) of the 27 EU countries, the Bank of England (BoE) and the European Central Bank (ECB). All 37 institutions² responded providing full or partial answers to the questionnaire.

Figure 1

PARTICIPATING ESCB/SSM INSTITUTIONS (a)



SOURCE: Own elaboration.

a The United Kingdom left the European Union on 31 January 2020, and is now in a transition period in which both sides must negotiate the terms of their future relationship.

¹ For the questionnaire template, please consult Annex 1.

² For the full list of participating institutions in this report, please consult Annex 2.

The questionnaire was structured in five areas:

- Right of access.
- Structure of the right of access to information from NCBs/NCAs.
- Policy recommendations and best practices.
- Statistics for the period 2016 – 2019.
- Future initiatives.

The chapters of this report follow the same structure. First, the current legal framework on the right of access in each jurisdiction is outlined. Next, the focus of the report shifts to the structure of the right of access to information from NCBs and NCAs. The report then goes on to analyse compliance with transparency obligations, paying particular attention to certain special policy recommendations and best practices, statistics for the period 2016-2019 and future initiatives of the institutions. The overall conclusions are drawn in the final chapter.

For the purpose of clarity, in this report those EU institutions acting as both NCB and NCA in their respective jurisdictions shall be referred to as “[nationality] NCB/NCA”.

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2 Right of access

The right of access to public information (also known as the right to freedom of information, FOI) is widely considered to be an important premise for a well-functioning democratic system, a reinforcement of governments' and public officials' accountability, and a tool for allowing more informed participation by citizens in public life.

In the European Union (EU) context, the right of access is acknowledged first, in Article 42 of the Charter of Fundamental Rights of the European Union³, which states that “any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium”; and further, in Article 15.3 of the Treaty on the Functioning of the EU (“Treaty of Lisbon”)⁴, which gives EU citizens, and any natural or legal person residing or having its registered office in an EU country, the right of access to documents of the EU institutions.

Nevertheless, the regulation of the right of access to documents of the national institutions is a national competence and, for the time being, the EU does not have a mandate to harmonise national rules on access to information.

Notwithstanding the above, there is EU legislation in some specific areas, such as *access to environmental information* (see Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC⁵); *access to European Parliament, Council and Commission documents* (see Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents⁶); and *access to ECB documents* (see Decision of the ECB of 4 March 2004 on public access to ECB documents: ECB/2004/3⁷).

It should further be noted that, even without a general EU competence in this area, EU law significantly influences national access to information regimes through exceptions of access to information in national laws which require that EU law be taken into account or that they be interpreted in accordance with EU law. That is the case, for instance, of the EU data protection legislation and the EU confidentiality provisions in *Article 53 of Directive 2013/36/EU* of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and

3 For the Charter of Fundamental Rights of the European Union, please consult: https://eur-lex.europa.eu/eli/treaty/char_2012/oj.

4 For the Treaty on the Functioning of the EU, please consult: https://eur-lex.europa.eu/resource.html?uri=cellar:41f89a28-1fc6-4c92-b1c8-03327d1b1ecc.0007.02/DOC_1&format=PDF.

5 For Directive 2003/4/EC, please consult: <https://eur-lex.europa.eu/eli/dir/2003/4/oj>.

6 For Regulation (EC) No 1049/2001, please consult: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001R1049>.

7 For Public Access Decision of the ECB (ECB/2004/3), please consult: https://www.ecb.europa.eu/ecb/legal/date/2004/html/act_5439_amend.en.html.

investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (CRD IV)⁸ or in *Article 37 of the Statute of the ESCB and of the ECB*⁹.

The interplay between EU legislation and national legislation is, therefore, one of the challenges in the field of access to information.¹⁰ To gain an overview of the legal underpinnings of the right of access in the EU Member States, the aforementioned questionnaire asked each of the institutions about the general legal framework for access to public information, including references to national constitutions and lower level national regulations. The questionnaire further enquired about any special regime applicable to NCBs/NCAs that would protect their independence and the confidentiality of certain matters specific to the performance of their tasks.

Additionally, the participating institutions were asked about examples of judicial rulings affecting them concerning the right of access to information. Lastly, to form a full picture of national rights of access, the questionnaire enquired about the existence of designated national authorities overseeing the right of access and their sanctioning powers.

This chapter, based on the responses provided to the questionnaires by the NCBs/NCAs, examines the specific legal frameworks in which the right of access to public information is established in each of the Member States and at the EU and the United Kingdom level.

The right of access to public information is an important premise for a well-functioning democratic system, a reinforcement of governments' and public officials' accountability, and a tool for allowing more informed participation by citizens in public life.

2.1 Access to information as a constitutional right

Out of 37 institutions, 22 (from 17 countries) confirmed that the right of access to information is a constitutional right in their country or in the EU, which shows that in most European countries (and in the EU) access to public information is a fundamental right. In addition, the

⁸ Article 53 of Directive 2013/36/EU, entitled 'Professional secrecy', states in paragraph 1 that "Member States shall provide that all persons working for or who have worked for the competent authorities and auditors or experts acting on behalf of the competent authorities shall be bound by the obligation of professional secrecy. Confidential information which such persons, auditors or experts receive in the course of their duties may be disclosed only in summary or aggregate form, such that individual credit institutions cannot be identified, without prejudice to cases covered by criminal law [...]". For Directive 2013/36/EU (CRD IV), please consult: <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32013L0036>.

⁹ Article 37 of the Statute of the ESCB and of the ECB, entitled 'Professional secrecy', provides that: "37.1. Members of the governing bodies and the staff of the ECB and the national central banks shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy. 37.2. Persons having access to data covered by Union legislation imposing an obligation of secrecy shall be subject to such legislation". For the Statute of the ESCB and of the ECB, please consult: https://www.ecb.europa.eu/ecb/legal/pdf/oj_c_2016_202_full_en_pro4.pdf.

¹⁰ More detailed references to ECB Decision (ECB/2004/3) and the scope of its application, and to the EU confidentiality provisions (which are especially important for the ESCB and the SSM, where common confidentiality provisions apply), can be found in Sections 2.3, 2.4, 3.1 and 3.8 of this report.

Figure 2

ACCESS TO INFORMATION AS A CONSTITUTIONAL RIGHT

THE RIGHT TO ACCESS TO INFORMATION IS...	...a constitutional right in 17 countries of the European Union (EU): Belgium, Bulgaria, Croatia, Czech Republic, Estonia, Finland, France, Greece, Hungary, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia, Slovenia and Sweden.
	...acknowledged in the Charter of Fundamental Rights of the European Union and in the Treaty on the Functioning of the EU ("Treaty of Lisbon").
	...not recognised in the constitutions of the following countries: Austria, Cyprus, Denmark, Germany, Ireland, Italy, Luxembourg, Malta, Netherlands, Spain and United Kingdom.

SOURCES: ESCB/SSM institutions (Annex 2).

ECB noted that the right of access to documents of the EU institutions was acknowledged in Article 42 of the Charter of Fundamental Rights of the European Union¹¹, and in Article 15 of the Treaty on the Functioning of the EU ("Treaty of Lisbon")¹², which came into force in 2009.

The following are examples of the constitutions that clearly recognise the right of access:

- The Belgian Constitution (Article 32) states that: *"Everyone has the right to consult any administrative document and to obtain a copy, except in the cases and conditions stipulated by the laws, federate laws or rules referred to in Article 134"*.
- The Bulgarian Constitution (Article 41) states that: *"(1) Everyone is entitled to seek, obtain, and disseminate information. This right shall not be exercised to the detriment of the rights and reputation of others, or to the detriment of national security, public order, public health, and morality. (2) Citizens shall be entitled to obtain information from state bodies and agencies on any matter of legitimate interest to them which is not a state or official secret and does not affect the rights of others"*.
- The Estonian Constitution (§ 44) states that: *"Everyone is entitled to free access to information disseminated for public use. Pursuant to a procedure provided by law, all government agencies, local authorities, and their officials have a duty to provide information about their activities to any citizen of Estonia at his or her request, except for information whose disclosure is prohibited by law and information intended exclusively for internal use. Pursuant to a procedure*

¹¹ For the Charter of Fundamental Rights of the European Union, please consult: https://eur-lex.europa.eu/eli/treaty/char_2012/oj.

¹² For the Treaty on the Functioning of the EU, please consult: https://eur-lex.europa.eu/resource.html?uri=cellar:41f89a28-1fc6-4c92-b1c8-03327d1b1ecc.0007.02/DOC_1&format=PDF.

provided by law, any citizen of Estonia is entitled to access information about himself or herself held by government agencies and local authorities and in government and local authority archives. This right may be circumscribed pursuant to law to protect the rights and freedoms of others, to protect the confidentiality of a child's filiation, and in the interests of preventing a criminal offence, apprehending the offender, or of ascertaining the truth in a criminal case. Unless otherwise provided by law, citizens of foreign states and stateless persons in Estonia enjoy the rights specified in paragraphs two and three of this section equally with citizens of Estonia.”¹³

- The Finnish Constitution (section 12) states that: *“Everyone has the freedom of expression. Freedom of expression entails the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. More detailed provisions on the exercise of the freedom of expression are laid down by an Act. Provisions on restrictions relating to pictorial programmes that are necessary for the protection of children may be laid down by an Act. Documents and recordings in the possession of the authorities are public, unless their publication has for compelling reasons been specifically restricted by an Act. Everyone has the right of access to public documents and recordings”.*

- The Hungarian Constitution (Article VI) states that: *“[...] (3) Everyone shall have the right to the protection of his or her personal data, as well as to access and disseminate data of public interest. (4) The application of the right to the protection of personal data and to access data of public interest shall be supervised by an independent authority established by a cardinal Act”.*

The French Constitution of 1958 does not have an explicit article concerning the right of access to public information. However, in its preamble it refers to the principles defined in the Declaration of human and civil rights of 1789, notably to Article 15, which states that *“Society has the right to ask a public official for an accounting of his Administration”*. The French Constitutional Council has recently and for the very first time declared that the right of access is a constitutional right (Decision no. 2020-834 QPC, 3 April 2020¹⁴).

Figure 3 shows the countries that recognise the right of access in their Constitutions or Fundamental Laws.

The Austrian and Dutch constitutions do not guarantee a subjective constitutional right to information. Nevertheless, they both include duties for the government bodies to impart information. In the case of the Austrian constitution, this duty is limited as it only

¹³ For the Estonian Constitution, please consult: <https://www.president.ee/en/republic-of-estonia/the-constitution/>.

¹⁴ For Decision no. 2020-834 QPC, April 3, 2020, please consult: <https://www.conseil-constitutionnel.fr/decision/2020/2020834QPC.htm>.

Figure 3

THE RIGHT OF ACCESS IN CONSTITUTIONS OR FUNDAMENTAL LAWS

COUNTRY	ARTICLE IN CONSTITUTION / FUNDAMENTAL LAW
Belgium	– Article 32 of the Belgian Constitution https://www.dekamer.be/kvvcr/pdf_sections/publications/constitution/GrondwetUK.pdf
Bulgaria	– Article 41 of the Constitution of the Republic of Bulgaria https://www.servat.unibe.ch/icl/bu00000_.html
Croatia	– Article 38 of the Croatian Constitution https://www.usud.hr/sites/default/files/dokumenti/The_consolidated_text_of_the_Constitution_of_the_Republic_of_Croatia_as_of_15_January_2014.pdf
Czech Republic	– Article 17 of Law No. 2/1993, the Charter of Fundamental Rights and Freedoms, which according to Article 3 of the Constitution of the Czech Republic is an integral component of the country's constitutional system https://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/Pravni_uprava/AJ/Listina_English_version.pdf https://psp.cz/en/docs/laws/constitution.html
Estonia	– § 44 of the Constitution of the Republic of Estonia https://www.president.ee/en/republic-of-estonia/the-constitution/
Finland	– Section 12 of the Constitution of Finland https://finlex.fi/en/laki/kaannokset/1999/en19990731.pdf
France	– The French Constitution of 1958 does not have an explicit article concerning the right of access to public information. However, in its preamble it refers to the principles defined in the Declaration of human and civil rights of 1789, notably to Article 15, which states that “Society has the right to ask a public official for an accounting of his Administration”.
Hungary	– Article VI of the Fundamental Law of Hungary https://njt.hu/translated/doc/TheFundamentalLawofHungary_20190101_FIN.pdf
Greece	– Article 5A and 10 of the Constitution of Greece, as revised by the parliamentary resolution of 27 May 2008 https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf
Latvia	– Point 104 of the Constitution of the Republic of Latvia https://likumi.lv/ta/en/id/57980-the-constitution-of-the-republic-of-latvia
Lithuania	– Article 25 of the Constitution of the Republic of Lithuania https://www.lrkt.lt/en/about-the-court/legal-information/the-constitution/192
Poland	– Article 61 of the Constitution of the Republic of Poland https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm
Portugal	– Article 268 of the Constitution of the Portuguese Republic https://www.parlamento.pt/sites/EN/Parliament/Documents/Constitution7th.pdf
Romania	– Article 31 of the Constitution of Romania http://www.cdep.ro/pls/dic/site.page?id=371
Slovakia	– Article 26 of the Constitution of the Slovak Republic https://www.prezident.sk/upload-files/46422.pdf
Slovenia	– Article 39 of the Slovenian Constitution https://www.us-rs.si/en/about-the-court/legal-basis/constitution/
Sweden	– Freedom of the Press Act Chapter 2 On the Public Nature of Official Document https://www.riksdagen.se/globalassets/07.-dokument--lagar/the-constitution-of-sweden-160628.pdf

SOURCES: ESCB/SSM institutions (Annex 2).

applies to the extent that this does not conflict with a legal obligation to maintain confidentiality. As to the Dutch constitution, Article 110 states that *“In the exercise of their duties government bodies shall observe the right of public access to information in accordance with rules to be prescribed by Act of Parliament”*.

The Italian NCB/NCA noted that even though the right of access is not expressly recognised as a constitutional right, it is inherent in the principle of sound administration governing the activity of public bodies enshrined in Article 97 of the Constitution, according to a settled jurisprudence of the Italian Constitutional Court¹⁵ (see, e.g., Decision no. 20 of 2019). In the case of Spain, Article 105.b of the Constitution specifies that *“[the law shall regulate] public access to government archives and registers, except in those cases in which access would jeopardize State security or defense, the investigation of crimes, or individual privacy”*.

Additionally, the remaining institutions participating in the survey noted that the right to access public information is not recognised in the constitutions of the following countries: Cyprus, Denmark, Germany, Ireland, Luxembourg, Malta and the United Kingdom.

2.2 National legislation regulating the right of access to information

All institutions confirmed that there is national legislation regulating the right of access to information in their respective countries.¹⁶ In addition, in almost all of the countries the right of access to public information is regulated by a separate, central legal act concerned only with this matter. In the case of Greece, the rules on public access to documents are part of the general law on administrative procedure.¹⁷

Such legislation is highly important especially in countries where the subjective right to public access is not directly granted in the constitution. This is the case, as earlier mentioned, of Austria, Cyprus, Denmark, Germany, Ireland, Italy, Luxembourg, Malta, the Netherlands, Spain and the United Kingdom:

Austria

In Austria the right of access to public information is governed by the Duty to Grant Information Act¹⁸, which was introduced in 1987. This Act follows the Austrian Constitution in stating in §1 that *“(1) The organs of the federal government as well as the organs of the self-government to be regulated by federal legislation must provide information about matters within their sphere of activity, insofar as this does not conflict with a legal obligation to maintain confidentiality”*.

¹⁵ Please consult Decision no. 20 of 2019 of the Italian Constitutional Court: <https://www.cortecostituzionale.it/action/SchedaPronuncia.do?anno=2019&numero=20>.

¹⁶ A full list of the legal acts mentioned by the institutions is provided in Annex 3.

¹⁷ Article 5 (access to documents) of the Greek Code of Administrative Procedure (Law 2690/1999)

¹⁸ For the Duty to Grant Information Act (in German - Auskunftspflichtgesetz), please consult: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000916>.

Nevertheless, the Act in §2 provides anybody with the possibility of requesting information. Significantly, this law only provides for the release of (certain) information but does not actually allow access to files.

Additionally, Austria transposed the Public Sector Information Directive into the Austrian Information Reuse Act for the public sector. However, the Austrian High Court ruled that this last Act does not constitute a separate right to access information.¹⁹

Cyprus

In Cyprus the right of access will be governed by the Law on Public Access to Information of the Public Sector, Law of 2017 (184 (I)/2017), which will come into force on 22 December 2020.²⁰ This is state-level legislation. Article 3 thereof provides that *“Any natural or legal person has the right to request access to information held by a public authority in accordance with the provisions of this Law”*.

Denmark

In Denmark the right of access is regulated by the Access to Public Administration Files Act of 2013,²¹ which in § 7 states that *“Anyone may require to be made aware of documents entered into or created by an authority, etc. as part of administrative proceedings in connection with its business”*.

Germany

In Germany, at federal level, the legal framework for access to public information is established by the Freedom of Information Act 2005, amended in 2013,²² which in Section 1 Underlying principles states that *“Everyone is entitled to official information from the authorities of the Federal Government in accordance with the provisions of this Act. This Act shall apply to other Federal bodies and institutions insofar as they discharge administrative tasks under public law”*.

Ireland

In Ireland, the right to public information is governed by the Freedom of Information Act 2014²³ which, in Chapter 2 point 11(1), establishes the following: *“Subject to this Act, every person has a right to and shall, on request therefor, be offered access to any record held by an FOI body and the right so conferred is referred to in this Act as the right of access”*.

19 For the Austrian High Court decision, please consult: https://rdb.manz.at/document/ris.jusr.JJR_20090714_OGH0002_0040OB00035_09I0000_001.

20 For the Cypriot Law on Public Access to Information of the Public Sector, Law of 2017, please consult: http://www.cylaw.org/nomoi/enop/non-ind/2017_1_184/full.html.

21 For the Danish Access to Public Administration Files Act, please consult: <https://www.retsinformation.dk/Forms/R0710.aspx?id=152299>.

22 For the German Freedom of Information Act, please consult: http://www.gesetze-im-internet.de/englisch_ifg/index.html.

23 For the Irish Freedom of Information Act 2014, please consult: <http://www.irishstatutebook.ie/eli/2014/act/30/enacted/en/html?q=Freedom+of+Information>.

Italy

In Italy the legislator has introduced public access through Legislative decree no. 33 of 2013 (Law on transparency),²⁴ which states in Article 2 that *“The provisions of this decree regulate the freedom of access by anyone to data and documents held by public administrations and other subjects referred to in Article 2-bis, guaranteed, in compliance with the limits relating to the protection of public and private interests legally relevant, through civic access and through the publication of documents, information and data concerning the organization and activities of public administrations and the manner in which they are implemented”*.

Luxembourg

In Luxembourg the legal basis for the right to public access can be found in the recently enacted Law of 14 September 2018 on a transparent and open administration.²⁵ Article 1 (1) thereof establishes that *“Natural and legal persons have the right of access to documents held by state administrations and services, municipalities, unions of municipalities, public establishments placed under the supervision of the State or under the supervision of municipalities as well as legal persons providing public services, insofar as the documents relate to the exercise of an administrative activity. They also have access to documents held by the Chamber of Deputies, the Council of State, the Ombudsman, the Court of Auditors and the Professional Chambers, which relate to the exercise of an administrative activity”*.

Malta

The Maltese framework for access to information is established by the Freedom of Information Act of 2009 (Chapter 496 of the Laws of Malta),²⁶ which in Part I Article 3 states that *“Any eligible person has a right of access to documents held by public authorities in accordance with and subject to the provisions of this Act”*.

Netherlands

In the Netherlands, the basis for the right of access is the Act on public access to government information.²⁷ Article 3 thereof states the following: *“Any person may submit a request for information laid down in documents about an administrative matter to an administrative body or an institution, service or company operating under the responsibility of an administrative body”*.

24 For the Italian Law on Transparency, please consult: https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2013-04-05&atto.codiceRedazionale=13G00076&queryString=%3FmeseProvvedimento%3D%26formType%3Dricerca_semplice%26numeroArticolo%3D%26numeroProvvedimento%3D33%26testo%3D%26annoProvvedimento%3D2013%26giornoProvvedimento%3D¤tPage=1.

25 For the Luxembourg Law of 14 September 2018 on a transparent and open administration as amended (in French - Loi du 14 septembre 2018 relative à une administration transparente et ouverte), please consult: <http://legilux.public.lu/eli/etat/leg/loi/2018/09/14/a883/jo>.

26 For the Maltese Freedom of Information Act of 2009, please consult: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8962&l=1>.

27 For the Dutch Act on public access to government information (in Dutch - Wet openbaarheid van bestuur), please consult: <https://wetten.overheid.nl/BWBR0005252/2018-07-28>.

Spain

The Spanish Law on Transparency²⁸ covers the right to public access by providing in Article 12 for the following: “All persons have the right to access public information, under the terms set forth in Article 105.b) of the Spanish Constitution, as developed by this Law”.

United Kingdom

Access to public information in the United Kingdom is regulated by the Freedom of Information Act 2000²⁹, which in Part I point 1 grants that:

“Any person making a request for information to a public authority is entitled— (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and (b) if that is the case, to have that information communicated to him”.

2.3 Specificities of the regime applicable to institutions

Almost none of the institutions participating in the survey stated that their national legislation on the access to public information contains provisions that are specifically designed to protect the independence of central banks or the confidentiality of certain matters specific to the performance of their tasks.

Among the specificities reported by the institutions, the followings points are particularly relevant:

- The Slovenian NCB/NCA indicated the following provision of Article 5A(2) from the Slovenian Public Information Access Act:³⁰ *“The requesting authority shall refuse access to the requested information or re-use it if the request relates to information obtained or compiled as a result of a supervisory procedure conducted in accordance with the law by the Bank of Slovenia, the authority responsible for the supervision of the securities market, or insurance supervision, or another supervisory authority specializing in financial supervision, if the supervision process is still ongoing. Once the control process is completed, the authority may refuse access or re-use it even if disclosure of the requested information would cause harm to another person or if it would seriously jeopardize the other statutory tasks of the supervising institution conducting the process”.*
- According to Article 23(2) of the Spanish Law on Transparency,³¹ the Spanish NCB/NCA decisions on the right of access are only directly appealable at the

²⁸ For the Spanish Law on Transparency, please consult: <https://transparencia.gob.es/transparencia/dam/jcr:2fcd5d26-cf51-4775-8d44-6683586f1ee9/ley-de-transparencia-ingles.pdf> (not up to date).

²⁹ For the UK Freedom of Information Act 2000, please consult: <http://www.legislation.gov.uk/ukpga/2000/36/contents>.

³⁰ For the Slovenian Public Information Access Act, please consult: <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3336>.

³¹ For the Spanish Law on Transparency, please consult: <https://transparencia.gob.es/transparencia/dam/jcr:2fcd5d26-cf51-4775-8d44-6683586f1ee9/ley-de-transparencia-ingles.pdf> (not updated).

Administrative Court and not at the Spanish Council of Transparency and Good Governance, which is the authority that oversees right of access in Spain (see Section 2.5 of this chapter).

- Several NCBs/NCAs stated that their national legislation establishes general rules on public access for all public authorities. Given the independent status of the central banks, enshrined in various legal acts, including national constitutions, the Statute of the ESCB and of the ECB, and the NCBs' own acts and statutes, many institutions underlined that they are covered by the access to public information regulations only concerning their administrative tasks and not statutory ones.

In particular, the Luxembourg NCA stated that the Law of 14 September 2018 on a transparent and open administration³² deactivates, explicitly, the right of access to (i) documents protected by a legal obligation of confidentiality (article 1(2) (6.)), and (ii) documents relating to missions of control, inspection and regulation (article 1(2)(7.)). Furthermore, the principle of exclusion of regulatory/supervisory bodies such as the NCB and NCA has been explicitly confirmed by the Council of State (Conseil d'Etat) during parliamentary debates. For that reason, from a practical perspective, what is relevant for the Luxembourg NCA is the regulation of 8 June 1979 on non-contentious administrative procedure, which provides rules on the access to documents (for more details on this regulation, please consult Section 3.1 of this report).³³

Moreover, the Dutch NCB/NCA noted that the Dutch legislation excludes the Dutch NCB from the scope of the right of access in all matters in which the Dutch NCB has a legal task to fulfil.³⁴

- Additionally, many NCBs/NCAs pointed out that some of the exceptions to the right of access to public information are particularly relevant to NCBs and NCAs. One such instance is the exemption from disclosure of information that is covered by professional secrecy. The duty of professional secrecy is regulated both for the central banks (by the Statute of the ESCB and of the ECB, and by national central banks' legal acts), and for the competent authorities (in national acts implementing Article 53 of Directive 2013/36/EU (CRD IV)³⁵).

³² For the Luxembourg Law of 14 September 2018 on a transparent and open administration as amended (in French - Loi modifiée du 14 septembre 2018 relative à une administration transparente et ouverte), please consult: <http://legilux.public.lu/eli/etat/leg/loi/2018/09/14/a883/jo>.

³³ For the Luxembourg grand-ducal regulation of 8 June 1979 on the non-contentious administrative procedure (in French - Règlement grand-ducal du 8 juin 1979 relatif à la procédure à suivre par les administrations relevant de l'Etat et des communes), please consult: <http://legilux.public.lu/eli/etat/leg/rgd/1979/06/08/n7/jo>.

³⁴ Please consult: het Besluit bestuursorganen WNo en Wob in which legal act this exemption is laid down: <https://wetten.overheid.nl/BWBR0009896/2007-12-29>. This exemption will not continue under the new Bill on public access to government information. Please see Section 6 and footnote 147.

³⁵ For the CRD IV, please consult: <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32013L0036>.

- Moreover, the NCBs stressed that national access to information regimes do not cover the tasks performed by central banks as part of the ESCB, to which European Union law applies. One of the NCBs specified that, in its interpretation, this means that Article 37 of the Statute of the ESCB and of the ECB in conjunction with the provisions of the ECB public access regime (ECB/2004/3) apply to these ESCB tasks.

2.4 Judicial ruling on access to information

Several NCBs/NCAs reported on specific judicial rulings that concern the right of access to information both at national and European level.

The German NCA pointed to two European Court of Justice (ECJ) rulings in cases C-15/16 (Baumeister): ECLI:EU:C:2018:464³⁶ and C-140/13 (Altmann): ECLI:EU:C:2014:2362.³⁷ These cases are important as they influence the interpretation and understanding of the scope of supervisory information and shed more light on the professional secrecy requirement. The sentences of the cases state the following:

C-15/16 (Baumeister):

“1. Article 54(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC must be interpreted as meaning that all information relating to the supervised entity and communicated by it to the competent authority, and all statements of that authority in its supervision file, including its correspondence with other bodies, do not constitute, unconditionally, confidential information that is covered, consequently, by the obligation to maintain professional secrecy laid down in that provision. Information held by the authorities established by the Member States to perform the functions laid down by that directive that is information (i) which is not public and (ii) the disclosure of which is likely to affect adversely the interests of the natural or legal person who provided that information or of third parties, or the proper functioning of the system for monitoring the activities of investment firms that the EU legislature established in adopting Directive 2004/39, is to be so classified.

2. Article 54(1) of Directive 2004/39 must be interpreted as meaning that the confidentiality of information relating to the supervised entity and communicated to the authorities established by the Member States to perform the functions laid down by that directive must be assessed at the time of the examination which those authorities must undertake in order to decide on a request for disclosure relating to that information, irrespective of how that information was classified at the time when it was communicated to those authorities.

³⁶ For Case C-15/16 (Baumeister), please consult: <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-15/16>.

³⁷ For Case C-140/13 (Altmann), please consult: <http://curia.europa.eu/juris/liste.jsf?num=C-140/13&language=EN>.

3. Article 54(1) of Directive 2004/39 must be interpreted as meaning that information held by the authorities established by the Member States to perform the functions laid down by that directive that could constitute business secrets, but is at least five years old, must, as a rule, on account of the passage of time, be considered historical and therefore as having lost its secret or confidential nature unless, exceptionally, the party relying on that nature shows that, despite its age, that information still constitutes an essential element of its commercial position or that of interested third parties. Such considerations have no bearing in relation to information held by those authorities the confidentiality of which might be justified for reasons other than the importance of that information with respect to the commercial position of the undertakings concerned”.

C-140/13 (Altmann):

“Article 54(1) and (2) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC must be interpreted as meaning that, in administrative proceedings, a national supervisory authority may rely on the obligation to maintain professional secrecy against a person who, in a case not covered by criminal law and not in a civil or commercial proceeding, requests it to grant access to information concerning an investment firm which is in judicial liquidation, even where that firm’s main business model consisted in large scale fraud and wilful harming of investors’ interests and several executives of that firm have been sentenced to terms of imprisonment”.

The importance of the above-mentioned decisions is revealed at the national level, where the national courts are guided by the principles established in the ECJ rulings. An example of this is the ruling of the highest administrative court in Belgium,³⁸ the State Council (“Conseil d’État”/“Raad van State”), from 2018. It asserts that the National Bank of Belgium did not sufficiently motivate a decision to refuse access to certain information regarding a decision it took as the competent prudential supervisor for the Belgian insurance sector. In the substantiation of its ruling, the Belgian court referred to the sentence of the ECJ C-15/16 (Baumeister): ECLI:EU:C:2018:464 case.

Another interesting case³⁹ was reported by the Croatian NCB/NCA, where the High Administrative Court of the Republic of Croatia ruled, in September 2016, that it dismissed the claim for annulment of the decision of the Information Commissioner.⁴⁰ This decision of

38 For the ruling of the Belgium State Council, please consult: <http://www.raadvanstate.be/Arrets/242000/900/242960.pdf#xml=http://www.raadvanstate.be/apps/dtsearch/getpdf.asp?DocId=34848&Index=c%3a%5csoftware%5cdtsearch%5cindex%5ccarrets%5ffr%5c&HitCount=85&hits=1b+2c+2d+43+44+4b+4c+91+92+9d+9e+bc+131+13d+1b0+1b1+209+20a+20e+29c+29d+2a7+2e4+2e5+3de+3df+404+405+4ff+500+518+598+5b3+639+6a8+6a9+6e3+6e4+776+777+7d7+7f0+872+883+8cf+92a+944+945+978+99b+99c+ceb+117e+1200+1201+1217+1262+12b3+12cf+13e4+13e5+1434+145a+14d0+14d1+1563+171e+171f+1816+1817+1835+184a+184b+185e+18f8+18f9+191d+191e+1929+192a+19a0+19a1+19c3+19c4+19e9+&0256472020714>.

39 High Administrative Court Judgement No. UsII-130/16-8 from 22.9.2016. <http://tom.pristupinfo.hr/odlukes/1489994530-Uss-II-130-16-8.docx>.

40 UP/II-008-07/16-01/146 No. 401-01/04-16-05 from 15.7.2016. <http://tom.pristupinfo.hr/pregledfilter1.php?izb=533>.

the Information Commissioner required the Croatian NCB/NCA to provide the consumer association “Franak” with information in response to the following questions:

- Have you identified any illegalities in the conversion process? Which, and by which banks?
- Have you taken any steps in respect of the banks, and what kind of measures are being taken and against which banks?
- Have you initiated misdemeanour proceedings against banks? Against which ones?

According to the decision, the Croatian NCB/NCA should provide this information within eight days of receipt of this decision. The High Administrative Court of the Republic of Croatia considered that the public interest prevailed over the protection of secrecy and did not find grounds for annulment of the contested decision of the Information Commissioner. The Croatian NCB/NCA released the requested information on its website.:⁴¹

On the other hand, the Greek Supreme Administrative Court (Conseil d’Etat), in its judgment no. 1248/2019, ruled that:

“12. Under EU law the principle of transparency is neither unconditional nor unrestricted. In particular, restrictions to the right of access to documents or to the right to transparency of the action of EU institutions are accepted if justified by public interest reasons subject, inter alia, to the principle of proportionality, in cases related to economic operations, such as competition cases and financial stability safeguard and EU economic policy [...].

13. [...] In view of the above and taking into consideration that it is not prohibited by the above mentioned provisions [provisions of Greek law 3601/2007 regarding banking secrecy and law 3864/2010 regarding viability control], the BoG [Bank of Greece] lawfully refuse to grant the data to the shareholders of the credit institution which was found to be non-viable. The above provision constitutes a restriction of the transparency principle in favour of the principle of effectiveness of public action and was provided by the legislator in order to safeguard the stability of financial system and consolidate the confidence of counterparties to the system; the economic freedom is subject to the above restriction for reasons of general interest related to the national economy”.

Likewise, the Spanish National High Court, in its judgment of 16 October 2019 (no. 4149/2019),⁴² acknowledged the duty of secrecy by which the Spanish NCB/NCA is bound. It stresses that it is one of the “limits” of the right of access to information, specifically in relation to the actions and information obtained by the Spanish NCB/NCA in the exercise of

⁴¹ For the information released by the Croatian NCB/NCA, please consult: https://www.hnb.hr/documents/20182/499482/h-odgovori-Udruzi-Franak_26102016.pdf/0d1b7bbb-264e-4e54-8123-14c6f81f96a3.

⁴² For the Spanish National High Court judgment of October 16, 2019 (number 4149/2019), please consult: <http://www.poderjudicial.es/search/AN/openDocument/652f82acb6b755fc/20191210>.

its functions. The court rejected the appeal on the Spanish NCB/NCA decision not to provide access to supervisory information.

Additionally, the Dutch NCB/NCA reported that there have been many cases in which the courts confirmed that Dutch NCB/NCA does not fall within the scope of the Act on public access to government information for its legal tasks as a central bank and as a competent authority in the field of supervision and resolution. This jurisprudence demonstrates that the legal act (see footnote 29) that excludes the Dutch NCB/NCA from the scope of the Act pertains to all matters in which the Dutch NCB/NCA has a legal task to fulfil.⁴³ In a recent case, however, it was ruled that the Dutch NCB/NCA does fall within the scope of the Act with regard to the handling of requests based on the right to access to information. All decisions by which the Dutch NCB/NCA denies access to information had to be made public pursuant to this ruling⁴⁴.

Finally, the ECB indicated the following cases:

- Case C-396/19 P *Espírito Santo Financial Group v ECB*,⁴⁵ in which the General Court annulled the ECB decision of 31 August 2016 that partially refused to disclose certain documents relating to its decision of 1 August 2014 concerning Banco Espírito Santo SA. Namely, it refused to disclose the amount of credit indicated in the extracts of the minutes recording the decision of the Governing Council of the ECB of 28 July 2014 and the information redacted from the proposals of the Executive Board of the ECB of 28 July and 1 August 2014.
- Case T-436/09 *Julien Dufour v ECB*,⁴⁶ in which the General Court annulled the ECB decision that refused to grant the applicant access to the ECB database. In its ruling the General Court stated that *“Since no single ECB database exists which the applicant might obtain ‘as such’ by means of his application, the view that the entirety of the data contained in a database constitutes a document within the meaning of Article 3(a) of the decision is sufficient to enable the applicant to obtain [...] both the specific data of interest to him and the right to use [...] the tools available for the various ECB databases containing those data”*.
- Case T-116/17 *Spiegel-Verlag Rudolf Augstein GmbH & Co. KG and Michael Sauga v ECB*,⁴⁷ in which the General Court dismissed the action for annulment

⁴³ For some examples of court judgements, please consult: District Court of Amsterdam, decisions dated 21 March 2017 (ECLI:NL:RBAMS:2017:1785) and 5 July 2017 (ECLI:NL:RBAMS:2017:7789). Also consult the decisions of the High Administrative Court dated 30 March 2011 (ECLI:NL:RVS:2011:BP9590) and 17 April 2019 (ECLI:NL:RVS:2019:1236).

⁴⁴ Please consult the decision by the District Court of Amsterdam dated 8 October 2019 (ECLI:NL:RBAMS:2019:7505).

⁴⁵ For the Judgment of the General Court in case C-396/19 P, please consult: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=211677&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=6776654>.

⁴⁶ For the Judgment of the General Court in case T-436/09, please consult: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=111823&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=6777353>.

⁴⁷ For the Judgment of the General Court in case T-116/17, please consult: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=206171&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=6778643>.

of the decision of the Executive Board of the ECB, notified to the applicants by a letter dated 15 December 2016, rejecting their application for access to two documents concerning the public deficit and the public debt of the Greek Republic.

- Case C-28/13 P Gabi Thesing and Bloomberg Finance LP v ECB⁴⁸, in which the ECJ dismissed the appeal of Ms Thesing and Bloomberg Finance LP (Bloomberg) by which they sought to have set aside the judgment of the General Court of the European Union of 29 November 2012 in Case T590/10 Thesing and Bloomberg Finance v ECB (the judgment under appeal), under which the General Court dismissed their action for annulment of the ECB decision of 21 October 2010, confirming the refusal of access to two documents concerning the public deficit and the public debt of the Greek Republic.

- Case C-594/16, Enzo Buccioni v Banca d'Italia, ECLI:EU:C.2018:717.⁴⁹ In its preliminary ruling the Court addressed the issue of pre-trial disclosure of confidential documents related to credit institutions which have been declared bankrupt or are being compulsorily wound up. Namely, the Court clarified that *“Article 53(1) of Directive 2013/36 must be interpreted as not precluding the competent authorities of the Member States from disclosing confidential information to a person who so requests in order to be able to institute civil or commercial proceedings with a view to protecting proprietary interests which were prejudiced as a result of the compulsory liquidation of a credit institution. However, the request for disclosure must relate to information in respect of which the applicant puts forward precise and consistent evidence plausibly suggesting that it is relevant for the purposes of civil or commercial proceedings, the subject matter of which must be specifically identified by the applicant and without which the information in question cannot be used. It is for the competent authorities and courts to weigh up the interest of the applicant in having the information in question and the interests connected with maintaining the confidentiality of the information covered by the obligation of professional secrecy, before disclosing each piece of confidential information requested”*.

The ECB also noted that Regulation (EC) No 1049/2001 establishes the framework for access to documents of the European Parliament, Council and Commission. As it stands, the Regulation does not apply directly to the ECB.⁵⁰ However, the ECJ applies its jurisprudence on the Regulation to the ECB *mutatis mutandis*.

⁴⁸ For the Order of Court in case C-28/13, please consult: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=147801&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=6779021>.

⁴⁹ For the Judgment of the General Court in case C594/16, please consult: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=205667&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1673781>.

⁵⁰ As stated in Section 2.3, the Decision of the ECB of 4 March 2004 on public access to ECB documents (ECB/2004/3) establishes the access regime for the ECB.

2.5 National competent authorities supervising the right of access

In some countries there are national authorities specifically tasked with oversight of the right of access. The competences and powers of these national authorities differ from country to country.

Some NCBs/NCAs reported on national authorities tasked specifically with the oversight of the right to access.⁵¹ Additionally, some institutions from the remaining countries noted the advisory role of the national Ombudsman in the field of access to information.

The competences of the 15 authorities specifically equipped with the task of supervision in the field of access to information differ from country to country. Thus:

- In Belgium, France, Luxembourg and Portugal the respective Commissions for access to administrative documents (CADA) do not have binding powers and act as advisory bodies. The difference is that, in the case of France, the applicant is obliged to ask CADA for a recommendation before initiating litigation in an administrative court. In the case of Belgium, the request for an opinion to CADA has to be submitted in parallel with an administrative appeal. In the case of Portugal, the applicant can ask CADA for an opinion before requesting an administrative review. Finally, in the case of Luxembourg, CADA (an advisory body) issues opinions on the refusal to grant access to documents, upon written request submitted by the interested person. Additionally, any refusal to grant access to documents further to a positive opinion of CADA may be subject to court remedy before the administrative courts (reversal on appeal/“recours en reformation”). In all the above cases, the respective CADA would provide its non-binding opinion on the case at hand.
- The German Federal Commissioner for Freedom of Information also has only an advisory role in that it can issue non-binding recommendations and act as a mediator in the case of individual complaints. If it considers that the Freedom of Information Act has been violated, it can issue a formal objection and inform the superior authority (in the case of the German NCB, there is no superior authority) and, if necessary, the German Bundestag about this matter.
- The Spanish Council of Transparency and Good Governance not only issues advice and recommendations on the most effective fulfilment of the right to

⁵¹ For the full list of these authorities supervising the right of access, please consult Annex 4.

access obligations, but also acts as an appeal body, where an optional appeal can be lodged before being submitted to an administrative court. Notwithstanding the above, it should be stressed that the Spanish Law on Transparency clearly states that the Spanish NCB/NCA's decisions can only be appealed before an administrative court.

- Another type of authority overseeing the right of access is the Information Commissioner, who is entrusted with binding powers to alter or annul the public authority's decisions. This type of instrument is at the disposal of the Information Commissioners in Croatia, Ireland and Slovenia, which all act as the second instance bodies in resolving complaints relating to exercising the right of access to information. These binding instructions to change or annul decisions can be appealed in courts (see, e.g. the Croatian High Administrative Court Judgement No. UsII-130/16-8 from 22.9.2016⁵²).
- In Malta and the United Kingdom, the Information Commissioners have the power to issue decisions and enforcement notices regarding the release of information.⁵³ If the authority does not comply with the notice, the Commissioner can bring the case before the court.⁵⁴
- In the case of the Czech Republic, the Office for personal data protection that oversees the rights of access has the power to review final FOI decisions of the public authorities. It may also adopt measures against inactivity of requested public authority and order it to provide information. The Estonian Data Protection Inspectorate has similar powers and may also initiate supervision proceedings on the basis of a challenge or on its own initiative. This is also true for the Hungarian National Authority for Data Protection and Freedom of Information, which may commence an inquiry ex officio and *“if it finds that there is an infringement relating concerning the exercise of the right to access public data or that there is an imminent threat of such an infringement, it shall require the controller to remedy the infringement and eliminate the imminent threat of such an infringement”*.
- In Cyprus the duties assigned to the Information Commissioner will be exercised by the respective Personal Data Protection Commissioner, once

⁵² For the Croatian High Administrative Court Judgement No. UsII-130/16-8, please consult: <http://tom.pristupinfo.hr/odluke/1489994530-Us-II-130-16-8.docx>.

⁵³ The decisions concerning the Bank of England can be accessed under the following link: <https://icosearch.ico.org.uk/s/search.html?collection=ico-meta&profile=decisions&query&query=bank%20of%20england>.

⁵⁴ More specifically, in Malta, under Article 27(1) of the FOI Act, if the public authority, or an officer of such authority, refuses or, without good reason, fails to comply with a decision notice/an information notice/an enforcement notice, this shall be regarded as an offence (in terms of article 22(b) of the Data Protection Act) and shall, upon conviction, be liable to a fine of not less than €1,250 and not more than €50,000 or to imprisonment for six months or to both such fine and imprisonment. No proceedings shall be instituted in respect of any offence under Article 22 of the Data Protection Act except where the Commissioner provides information to any officer of the Executive Police.

the Cypriot Law on Public Access to Information of the Public Sector becomes operational from 22 December 2020 onwards. The Information Commissioner will have broad powers that include deciding on complaints brought before him in a binding manner and imposing administrative penalties. The Commissioner will also have the authority to enter without prior notice into any public authority and inspect whatsoever documents, materials and equipment.

Furthermore, in Croatia, Cyprus, Czech Republic, Estonia, Hungary, Ireland, Malta, Slovenia and the United Kingdom the national NCB/NCA have the same legal position as other supervised persons in the area of access to public information requirements.

Additionally:

- The Italian NCB/NCA explained that the Italian Anticorruption authority also acts as the transparency authority and, in this capacity, has some supervisory powers (e.g. power to request information), pursuant to Article 45 of Legislative decree no. 33 of 2013. In principle, such powers can also be exercised vis-à-vis the Bank of Italy.⁵⁵
- The Greek NCB/NCA noted that the National Transparency Authority (NTA) is an independent authority that aims to (a) reinforce transparency, integrity and accountability of governmental institutions, administrative authorities, state institutions and public organisations and (b) prevent, deter, detect and handle fraud and corruption in public and private bodies and organisations. Nevertheless, supervision of the right of access is not explicitly mentioned among the duties of the NTA.

⁵⁵ The Italian NCB/NCA stated that, owing to the absence of any specific reference, it is not clear from the wording of the said decree whether compliance by public authorities with the provisions on public access (*accesso civico*) is included in the scope of supervision. However, the same decree envisages that the transparency authority may issue sanctions also on the ground of the fact that a request for public access has been unlawfully denied, delayed or limited (Article 46). This might lead to the conclusion that the supervision by the transparency authority also affects the observance of the rules regarding public access.

3 Structure of the right of access to information from central banks or competent authorities

After providing a general overview in Chapter 2 of the legal frameworks in which the right of access to public information is established in each of the Member States and at the EU and the United Kingdom level, and setting out how the institutions are included in these frameworks, in this chapter the analysis turns to the specifics of the FOI regulations and procedural rules for executing the right of access to information.

In order to obtain an overview of the key features of the FOI regulations on the right of information, the questionnaire used for the purpose of this report asked each of the institutions to describe the scope and subject of the right to access information, along with the limits or exceptions to granting access to information, including the treatment of supervisory information. Further, the questionnaire's focus shifted to the procedural rules for executing the right of access to information that were detailed in questions about the need for identification of the applicant, the ways in which a request can be submitted, and the deadlines and specific forms for providing a response by the institutions. Finally, this part of the questionnaire concluded with a series of questions concerning the internal and external appeal possibilities against a non-disclosure decision.

For the purpose of clarity, in this chapter the regulations on the right of access to public information (listed in Annex 3 of this report) shall generally be referred to as “[nationality] FOI Act/Law”.

3.1 Scope and subject of the right of access to information

Regulations on the right of access to public information do not usually distinguish between their own citizens and foreigners or private persons and legal entities. Therefore, the right of access to public information is granted to mostly everyone.

Almost all the NCBs/NCAs stated that the right of access to public information in their respective countries is granted to everyone. In general, the right of access legislation does not discriminate between citizens and foreigners or stateless persons, or between legal persons and organisational units without legal personality, i.e. social organisations. Additionally, in almost all cases there is no need for the applicant to have a reason or specific interest to access public information.

However, the ECB and Malta do not grant the right of access to all persons:

- In the case of the ECB, Article 2(1-2) of the Decision ECB/2004/3 states that:

“1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to ECB documents, subject to the conditions and limits defined in this Decision.”

2. The ECB may, subject to the same conditions and limits, grant access to ECB documents to any natural or legal person not residing or not having its registered office in a Member State”.

- Article 3 of the Maltese FOI Act grants the right of access to “eligible person”(s), who it defines in Article 2 as “a person who is resident in Malta and who has been so resident in Malta for a period of at least five years, and who is either a citizen of Malta or a citizen of any other member state of the European Union or a citizen of any other state the citizens of which have a right, in virtue of any treaty between such state and the European Union, to be treated in Malta in the same manner as citizens of member states of the European Union”.

Several NCBs/NCAs noted the existence of national legal frameworks, which allow privileged access to restricted information to those that have a valid interest:

- Interestingly enough, the Greek NCB/NCA noted that the right of access is granted to all persons under Article 5A(1) of the Constitution of Greece. However, Article 5(1) of the Greek Code of Administrative Procedure grants the right of access to administrative documents to “any interested party”, meaning that the applicant has to show specific interest.
- The Finnish NCB and BCA noted that the Openness Act,⁵⁶ in addition to granting general access to documents in the public domain to everyone, specifies in Sections 26 and 29 that an interested party (a party whose own case is pending with the authority) and another authority (for the purposes of that Act) have a broader right of access which also may include confidential documents. However, the other authority has to specify the legal basis of its request (i.e. the legal provision/act according to which the other authority has the right to receive confidential documents from the first authority).
- Similarly, the Latvian NCB and NCA pointed out that Section 5 of the Latvian FOI Law⁵⁷ regulates access to restricted information, which may be granted to those that can indicate (prove) the intended purpose of the use of said information.
- In the case of Italy, the Law on the administrative proceeding (Law no. 241 of 1990, Articles 22-27) provides for the right of access to administrative documents, on the condition that the applicant has a qualified interest in respect of the disclosure.

⁵⁶ For the Finnish Act on the Openness of Government Activities, please consult: http://finlex.fi/fi/laki/kaannokset/1999/en19990621_20150907.pdf.

⁵⁷ For the Latvian Freedom of Information Law, please consult: <https://likumi.lv/ta/en/en/id/50601-freedom-of-information-law>.

- Articles 11-13 of the Luxembourg regulation of 8 June 1979 on the non-contentious administrative procedure⁵⁸ provide access for any natural or legal person, whose administrative status is affected or likely to be affected by an administrative authority decision. Additionally, according to Article 5 of this regulation, “interested” third parties can have a right of access. Those provisions only concern the right to access the administrative file (i.e. no general access to whatsoever documents). The Luxembourg NCA noted that the administrative file comprises solely relevant information/documents on which it has based, or intends to base, its final decision. Moreover, in the context of central bank/prudential supervision, this access is strictly interpreted by national courts.

In terms of the scope of public information to which access is granted, most of the NCBs/NCAs highlighted the fact that their national FOI frameworks refer to any information held by or on behalf of public authorities in whatsoever format. For example, the Belgian NCB/NCA pointed out that, according to legal doctrine, it is sufficient that the documents have a “link” with an administrative act taken by the administrative authority to be “administrative documents”, to which access must be given. In the case of Bulgaria, “public information” is “*any information pertaining to the public life in the Republic of Bulgaria and enabling members of the public to form their own opinion regarding the operation of the entities obligated under the law*” (Article 2 of the Law on Access to Public Information)⁵⁹.

Even though public information is understood in the broad sense, not all information in the possession of public authorities is considered to be public. Section 3.8 of this chapter will discuss the limits/exceptions to granting access to public information.

It should also be noted that in many cases different subject matters or institutions are fully excluded from the application of the FOI regulations, e.g.:

- Neither the Bulgarian, Croatian nor Maltese FOI Laws apply to access to personal data;⁶⁰
- The Latvian FOI Law and the Spanish Law on Transparency do not apply to the exchange of information between institutions;
- The Maltese FOI Act⁶¹ does not apply to documents held by: (a) the Electoral Commission; (b) the Employment Commission; (c) the Public Service Commission; (d) the Office of the Attorney General; (e) the National Audit Office; (f) the Security

⁵⁸ For the Luxembourg regulation of 8 June 1979 on the non-contentious administrative procedure (in French - Règlement grand-ducal du 8 juin 1979 relatif à la procédure à suivre par les administrations relevant de l'Etat et des communes), please consult: <http://legilux.public.lu/eli/etat/leg/rgd/1979/06/08/n7/jo>.

⁵⁹ For the Bulgarian Law on Access to Public Information, please consult: <https://lex.bg/laws/ldoc/2134929408>.

⁶⁰ Please note that in other countries personal data are treated as an exemption and not an exclusion from the scope of right of access.

⁶¹ For the Maltese FOI Act, please consult: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8962&l=1>.

Service; or (g) the Broadcasting Authority, insofar as such documents relate to its functions under article 119(1) of the Constitution; or (h) the Ombudsman.

3.2 Main procedural rules for executing the right of access to information

Each of the analysed FOI laws regulates a procedure to follow for executing the right of access to information. The procedural requirements broadly concern:

- the need for identification of the applicant,
- the content of a request,
- ways for submitting a request,
- administrative deadlines for response,
- forms/means by which a response should be provided,
- need for third-party consultations,
- legal remedies (internal and external appeal).

In addition to referring to the national FOI law, the Latvian NCA pointed out that the judiciary also influences the procedural requirements. Namely, Latvian case-law⁶² recognises that the obligation of an authority to decide on the release of information depends on the significance to the public and to the individual of the information requested. Therefore, when requesting information, the public significance of the publicity of the information requested must be justified.

The following sections of this chapter further discuss the information provided by the NCBs/NCAs concerning the relevant procedural requirements listed above.

3.3 Need for self-identification, identification of the department and statement of the legal basis

There are differences in terms of the need for the identification of the applicant: some institutions require applicants to identify themselves while others provide responses to anonymous requests.

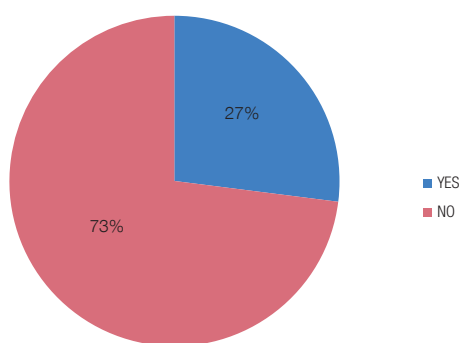
In terms of the need for the applicants to identify themselves (see Chart 1):

- 27 institutions reported that applicants have to identify themselves when submitting a request for access. The French NCB noted additionally that it does not respond to anonymous requests. Furthermore, the Maltese NCA specified that the application

⁶² For the 2014 Latvian Court ruling, please consult: <http://at.gov.lv/downloadlawfile/4380>.

Chart 1

DO APPLICANTS HAVE TO IDENTIFY THEMSELVES?



SOURCES: ESCB/SSM institutions (Annex 2).

shall include a copy of or make reference to the applicant's legally valid identification document or residence permit. The Irish NCB/NCA also requires photographic identification in cases when applicants are seeking their personal information.⁶³

- Ten institutions reported that there is no explicit requirement for applicants to identify themselves. Specifically, the Polish NCB stated that it accepts and responds to anonymous requests. Nevertheless, two institutions noted that, in practice, applicants generally identify themselves and, in terms of practicability and good responsible conduct, the identity of applicants should be checked. Additionally, the German NCB pointed out that in cases of denial of access to information, or when access is subject to the payment of fees, it asks for the name and the postal address of applicants in order to send them the rejection of the application. This is also true in the case of the Polish NCB, where the applicants are not required to identify themselves while submitting the request. Nonetheless, if the Polish NCB decides to deny access to information, then it needs to issue an administrative decision. This in turn requires obtaining personal information from the applicant (name and address) to be able to formulate the decision.

In terms of the need for the applicant to identify the department from which the information is requested,⁶⁴ only three institutions stated that there is such a need. However, none of the institutions gave any legal background for this requirement. One of those institutions considers that the identification of the department is needed so that it is able to answer the applicant's request.

Finally, as for the need to identify the legal basis for the request for access to information they are making,⁶⁵ 29 institutions stated that applicants do not need to identify the legal basis for

⁶³ For the Irish FOI Act Section 37 Personal information, please consult: <http://www.irishstatutebook.ie/eli/2014/act/30/section/37/enacted/en/html>.

⁶⁴ Please note that two institutions did not provide information on this issue.

⁶⁵ Please note that two institutions did not provide information on this issue.

their request for access to information. In particular, the German NCB stressed that, in principle, it is obliged to apply all possible legal bases that could provide a right to access. If needed, the German NCB has to clarify with the applicant which legal basis they wish to rely on.

3.4 Ways to submit a request for access

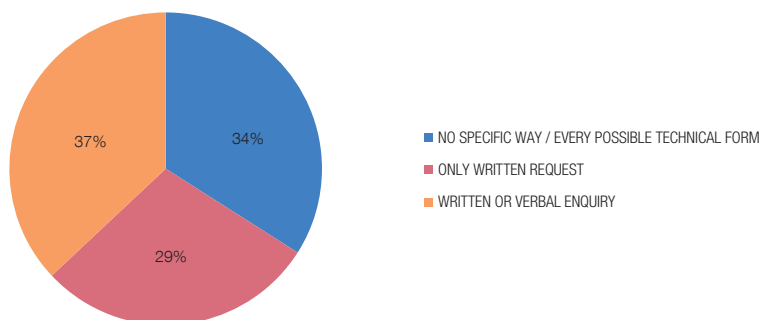
The means for submitting a request for access to information varied, ranging from institutions that require written form to those who accept requests submitted in every possible way.

In relation to the form in which request for access can be filed (see Chart 2):⁶⁶

- 12 institutions stated that there are no restrictions as to the form in which a request for access can be filed; therefore, those requests can be made in every possible technical form.
- Further, 13 institutions reported that the requests could be submitted either in written or verbal form, where the use of electronic means is considered as written form.
- Lastly, ten institutions stated that written form is required to file a request for access. The Portuguese NCB/NCA noted that, as a rule, the application must be filed in writing, but it may accept oral requests, at its own discretion.

Chart 2

IN WHAT WAY CAN APPLICANTS FILE REQUESTS FOR ACCESS? (a)



SOURCES: ESCB/SSM institutions (Annex 2).

a Two institutions did not provide information on this issue.

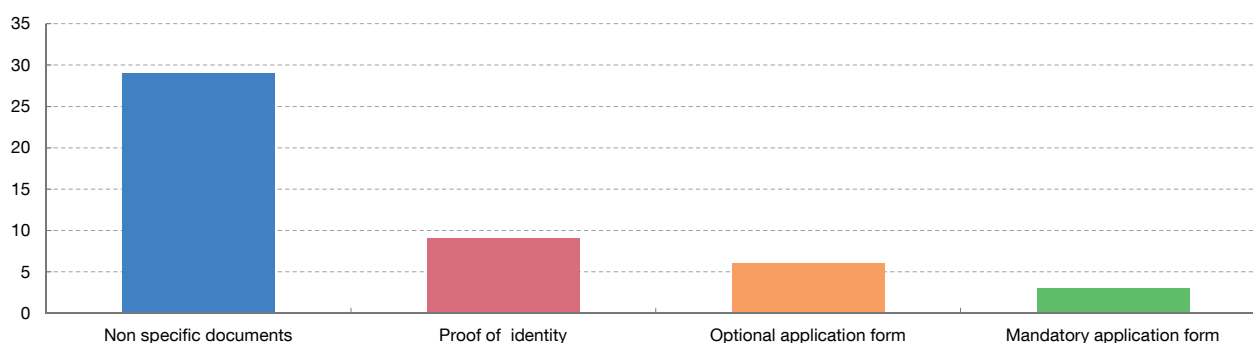
3.5 Required documentation to be filed with the requests for access

Most institutions do not require specific documents to be submitted by applicants to be able to file a request for access.

⁶⁶ Please note that two institutions did not provide information on this issue.

Chart 3

TYPES OF DOCUMENTS TO BE PROVIDED BY APPLICANTS (a) (b)



SOURCES: ESCB/SSM institutions (Annex 2).

a Institutions could choose multiple types of documents in their responses.

b Two institutions did not provide information on this issue.

Regarding the required documentation to be filed with the requests for access (see Chart 3):⁶⁷

- 29 institutions reported that there are no specific documents that need to be submitted by applicants to be able to file a request for access.
- Nine institutions require proof of identity to be submitted by the applicant. This includes four institutions that require proof of identity only in cases where applicants are seeking their own personal information.
- Six institutions provide an optional application form and three institutions state that the application forms are mandatory.⁶⁸

⁶⁷ Please note that two institutions did not provide information on this issue.

⁶⁸ The application forms can be accessed under the following links:

Institution	Link
Bulgarian NCB/NCA	– https://www.bnb.bg/RegistersAndServices/RSServices/RSPiAccess/index.htm?toLang=_EN
Croatian NCB/NCA	– https://www.hnb.hr/documents/20182/495604/h-obrazac-zahtjev-pristup-info.pdf/feb3be57-6b3c-4cf0-831e-30643f0bbc05
Estonian NCB	– https://www.eestipank.ee/esita-kusimus
Greek NCB/NCA	– https://www.bankofgreece.gr/en/useful-links/contact-form
Italian NCB/NCA	– https://www.bancaditalia.it/chi-siamo/procedimenti-amministrativi/Istanza_accesso_civico_generalizzato_modulo_generale.pdf – https://www.bancaditalia.it/chi-siamo/procedimenti-amministrativi/istanza_accesso_241.pdf
Lithuanian NCB/NCA	– For archives information: https://www.lb.lt/lt/kontaktai/prasymas-gauti-archyvine-informacija – For request or complaint (without identification): https://www.lb.lt/lt/uzklausa – Request and complaint with identification of person is provided via special electronic identification system: https://epristatymas.post.lt/en/pagrindinis
Maltese NCB & Maltese NCA	– https://freedomofinformation.gov.mt/online-form
Spanish NCB/NCA	– https://sedeelectronica.bde.es/f/websede/INF/Comun/Relcionados/descargar/Solicitud_acceso_informacion_publica.pdf

3.6 Time limit for a response to a request for access⁶⁹

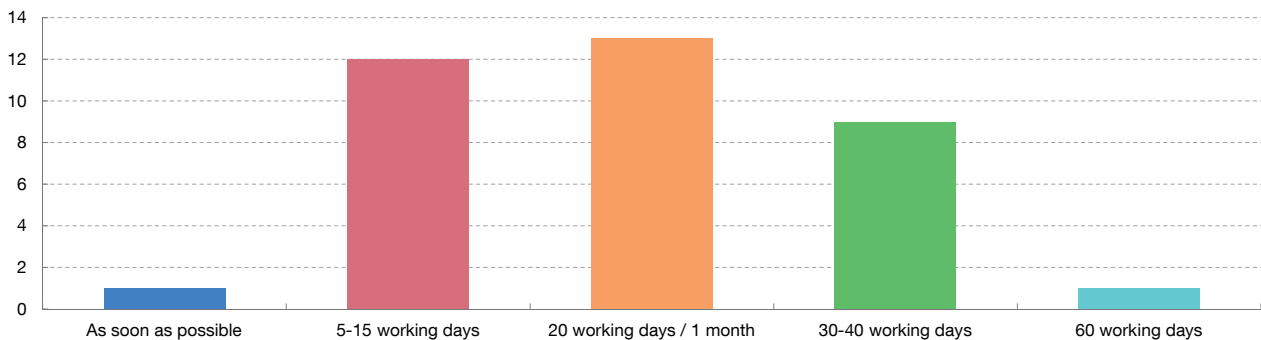
The time limits for providing responses to requests for access to information varied from just a couple of days to three months.

The time limit for providing a response to a request for access varies from just a couple of days to three months after receipt of the request (see Chart 4). Nevertheless, most of the institutions noted that the response should be provided without undue delay. In addition:

- One institution reported that the response should be provided as soon as possible and that a delay of just a few days is acceptable; however, the requests should be prioritised.
- Next, 12 institutions referred to deadlines ranging from 5 to 15 working days. This included three institutions that stated that the period can be extended up to one month, and a further two institutions that could extend the deadline up to two months.
- 13 institutions reported having a 20-working-day or one-month response period, including four institutions that could extend this deadline to a maximum of two months. In the case of the Spanish NCB/NCA, where extensions may be made, applicants must be informed within one month and provided with an explanation of why the extension is necessary.
- Nine institutions indicated having a 30 to 40 working days' deadline, with one institution having the possibility of extending the period up to a total of 45 working days.
- Lastly, one institution stated having a three-month period.

Chart 4

TIME LIMIT FOR A RESPONSE TO A REQUEST FOR ACCESS (a)



SOURCES: ESCB/SSM institutions (Annex 2).

a One institution did not provide information on this issue.

⁶⁹ Please note that one institution did not provide information on this issue.

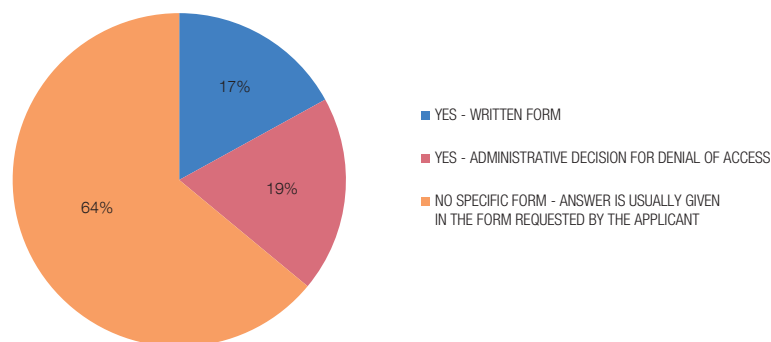
3.7 Means of responding to a request for access⁷⁰

As to the specific requirements to respond to requests for access (see Chart 5):

- Six of the institutions reported that the response to the request for access to information is given in written form, including either by email or on paper, dispatched by registered mail with a return slip or delivered to the applicant with signature on receipt.
- Further, seven institutions indicated that there is a requirement for the denial of access to be issued in an administrative decision form.
- The remaining 23 institutions stated that there were no specific requirements as to the form in which the requests for access to information should be fulfilled other than when possible answering in the form requested by the applicant. One of the institutions expressed preferring written form for evidentiary purposes. Another two institutions referred to passages from their national FOI regulations that asked for regard to be had to the information being received in the manner indicated by the applicant, especially in the case of the visually or aurally impaired. In addition, one institution noted that, where possible, the FOI law encourages the use of electronic formats. Lastly, it should be noted that the Slovak FOI Law provides a wide range of examples for possible disclosure formats (e.g. orally, by inspection of files, by transfer of data to a data carrier, disclosure of copies of the original, by telephone, fax, mail or email). It also specifies that an accessible form of making available information to applicants who are blind or visually impaired is that written in Braille or enlarged script.

Chart 5

IS THERE ANY SPECIFIC FORM / MEAN TO RESPOND? (a)



SOURCES: ESCB/SSM institutions (Annex 2).

a One institution did not provide information on this issue.

⁷⁰ Please note that one institution did not provide information on this issue.

3.8 Limits and exemptions to granting access to information

As noted in Section 3.1 of this chapter, the right of access to public information is generally understood broadly as the right of everyone to access all information in the possession of public authorities. Nevertheless, it is not an absolute right as it can be limited under certain circumstances.

The limits to the right of access are established in the relevant FOI regulations either by fully excluding specific matters and specific institutions from the scope of the regulation (see Section 3.1 of this report) or by applying exemptions and reasons for inadmissibility of a request for access to information.

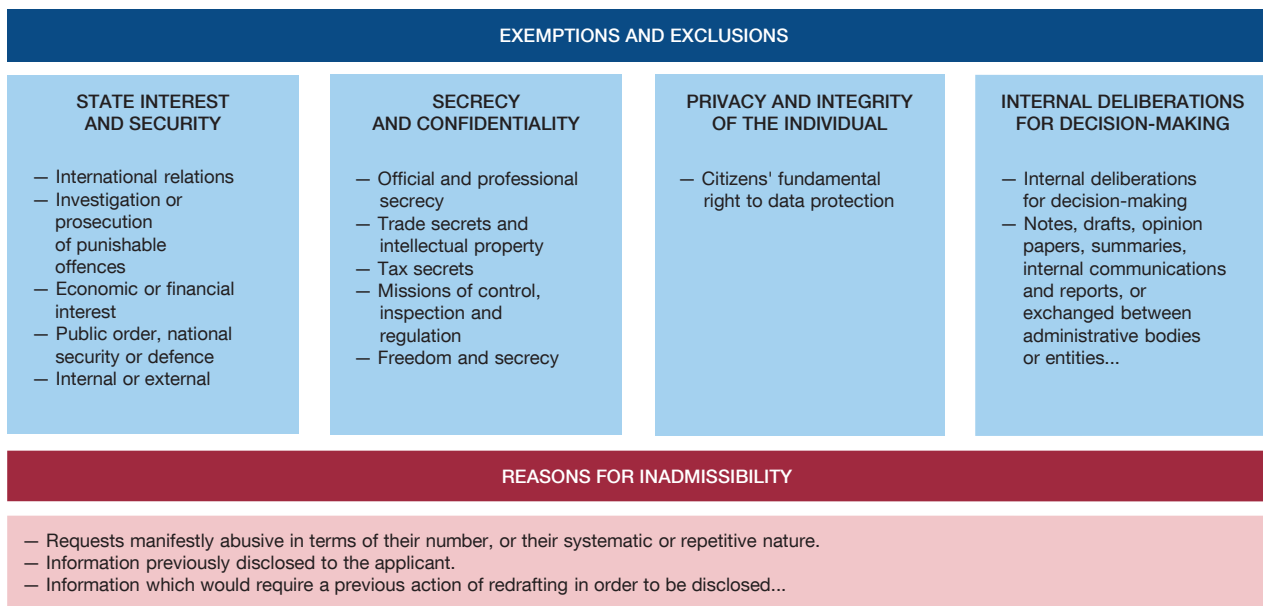
Types of exemptions according to the level of their conditionality (mandatory vs discretionary) and according to the subject matter will be discussed below and followed by different reasons for inadmissibility of requests for access that are present in the FOI laws analysed.

Exemptions

Exemptions can be either mandatory, where the obliged institutions shall not disclose certain information, or discretionary, where the obliged institutions may not disclose certain information. In the case of some exemptions the interests protected by non-disclosure need

Figure 4

EXEMPTIONS AND REASONS FOR INADMISSIBILITY OF A REQUEST FOR ACCESS TO INFORMATION (a)



SOURCES: ESCB/SSM institutions (Annex 2).

a The distinction between exclusions, exemptions and reasons for inadmissibility is fluid. A cause can be an exclusion in one country, an exemption in another and a reason for inadmissibility in a third country.

to be assessed against the public interest for disclosing the information. If the public interest prevails over the damage caused to protected interests, the information shall be made available. Some prominent examples of this can be found in the following regulations:

- Article 16 of the Croatian Right to Access to Information Act 71 requires that the public authority conducts the “Proportionality Test” and the “Public Interest Test” before reaching a decision on access to information in the case of almost all exemptions provided for in that Act.
- The Spanish Law on Transparency,⁷² where in Article 14, enumerating the discretionary exemptions to right of access, the public authorities are instructed that they should take into account the existence of not only public but also private higher interests justifying access.
- Other examples of the application of a public interest balancing test can be found in the FOI laws of Belgium, Bulgaria, Ireland, Malta, the Netherlands, Slovenia, the United Kingdom and the ECB.

In addition, some FOI laws require assessment of the harm caused by disclosure of exempted information, for example:

- The German FOI⁷³ in Section 3, concerning the protection of public interests, states that *“the entitlement to access to information shall not apply: 1) where disclosure of the information **may have detrimental effects** on [...], 2) where disclosure of the information may **endanger public safety**”*.
- Article 10 of the Dutch FOI states that:
“The provision of information pursuant to this Act is omitted insofar as this:
*a. could **endanger** the unity of the Crown;*
*b. could **harm** the security of the State [...].”*
- The FOI laws of Belgium, Hungary, Italy, Portugal and the ECB use terms such as **prejudicial, jeopardize, avoid material damage, cause damage, undermine**, with respect to the harm assessed for disclosure.

Lastly, it was observed that some FOI laws exempt information from disclosure unless explicit consent is provided by the relevant party, for example:

- In the case of the Czech Republic, the FOI law in Section 11(2)(a) states that:
“(2) The legally bound person shall not provide information if:

71 For the Croatian Right to Access to Information Act, please consult: <https://www.pristupinfo.hr/pravni-okvir/?lang=en>.

72 For the Spanish Law on Transparency, please consult: <https://transparencia.gob.es/transparencia/dam/jcr:2fcd5d26-cf51-4775-8d44-6683586f1ee9/ley-de-transparencia-ingles.pdf> (not up to date).

73 For the German FOI, please consult: http://www.gesetze-im-internet.de/englisch_ifg/englisch_ifg.html#p0043.

*(a) it is an information which originated without using the public funds, and has been handed over by an individual who the law does not impose such duty on unless he/she has stated he/she **agrees** with providing the information”.*

- Article 6(2)(1) of the Belgian FOI law states that:
*“§(2) The federal or non-federal administrative authority shall reject a request for consultation, explanation or communication in the form of a copy of an administrative document addressed to it in application of this law if the publication of the administrative document is prejudicial:
(1) invasion of privacy, unless the person concerned has given his prior written consent to the consultation or communication in the form of a copy [...]”.*
- Other exemptions that can be waived upon the valid consent of the relevant party can be also found in the Croatian, Dutch and German FOI laws.

In terms of exemption types, they can be broadly categorised into those safeguarding:

- state interest and security,
- secrecy and confidentiality of information,
- privacy and integrity of the individual,
- internal deliberations for decision-making.

a State interest and security

In the first category, the exempted information concerns the safety of the public, State security and defence, international relations, economic and financial interest, the secrecy of the proceedings of the State decision-making bodies, prevention and prosecution of crime, court proceedings, and the monitoring, control, audit or inspection tasks of public bodies. For example:

- In Belgian FOI Law the following information shall be exempted unless there is a higher public interest of access:
 - safety of the public;
 - public order, national security or defence;
 - international relations;
 - the investigation or prosecution of punishable offences;
 - state economic or financial interest, currency or public credit.

Additionally, the information shall not be disclosed if publication is prejudicial to *“the secrecy of the deliberations of the Federal Government and of the responsible authorities that are part of the federal executive power or with which a federal authority is associated”*.

- In the German FOI Act, the entitlement to access to information shall not apply, inter alia, where disclosure of the information may have detrimental effects on:
 - international relations;
 - military and other security-critical interests of the Federal Armed Forces;
 - internal or external security interests;
 - monitoring or supervisory tasks of the financial, competition and regulatory authorities;
 - matters of external financial control;
 - measures to prevent illicit foreign trade;
 - the course of current judicial proceedings, a person’s entitlement to a fair trial or the pursuit of investigations into criminal, administrative or disciplinary offences,
 - and *“where disclosure of the information may endanger public safety or where disclosure of the information would be capable of compromising fiscal interests of the Federal Government in trade and commerce or economic interests of the social insurance institutions”*.
- Other similar examples can be found in the British, Danish, Dutch, French, Hungarian, Italian, Irish, Luxembourg, Maltese, Romanian, Spanish, Swedish and ECB FOI laws.

b Secrecy and confidentiality of information

In the second category, secrecy and confidentiality of information, non-disclosure is applied to information that is considered confidential or secret on the basis of relevant (national, EU and international) laws. This category includes official and professional secrecy, trade secrets and intellectual property, tax secrets, information communicated in confidence and on the understanding that it would be treated as confidential, and freedom and secrecy of correspondence. For example:

- The Croatian FOI Law states that public authority bodies may restrict access to information:

- if the information has been classified by degree of secrecy, pursuant to the act governing classified information;
 - if the information represents a trade or professional secret, pursuant to law;
 - if the information represents a tax secret, pursuant to law;
 - if the information is protected by regulations governing intellectual property rights, except in the case of explicit written consent of the rights holder.
- The Luxembourg FOI law establishes a mandatory exemption for documents relating to, inter alia:
- intellectual property rights;
 - a secret or confidentiality protected by law;
 - missions of control, inspection and regulation;
 - the confidentiality of commercial and industrial information provided to the public bodies.

Additionally, documents that “*contain an opinion communicated in confidence to the administration*”, can be communicated only to the interested party, “*unless the confidentiality of the document has been lifted by the person who is at the origin of the document*”.

- Other similar examples can be found in the Bulgarian, Czech, Dutch, German, Italian, Maltese, Polish, Slovenian, Spanish, Swedish and ECB FOI laws.
- Interestingly, unless there is an overriding public interest, the Belgian FOI provides for protection of the secrecy of the identity of the person who communicated the document or information to the administrative authority in confidence to denounce a punishable act or presumed such act.

c Privacy and integrity of the individual

In the third category, privacy and the integrity of the individual, the exempted information concerns personal data. For example:

- According to the Portuguese FOI law a third party has the right of access to documents containing personal data only:
 - a if it has written authorisation from the person concerned;

- b if it is reasonably demonstrated that the third party has a direct, personal, legitimate and constitutionally protected interest sufficiently relevant to justify the access to information, considering the principle of proportionality, all fundamental rights at stake and the principle of open administration.
- Article 15 of the Spanish Law on Transparency, in the event of access to personal data, provides that:
 - a If the requested information refers to special data revealing, inter alia, ideology, trade union membership, religion or beliefs, the access to that information may only be authorised with the express written consent of the affected party, unless said party had publicly disclosed the information prior to the request for access.
 - b If the requested information refers to racial origin, health or sex life or the commission of a criminal or administrative infringement which does not involve a public reprimand of the transgressor, the access to that information may only be authorised with the express consent of the affected party, or if said access is protected by a regulation having the status of an Act.
 - c In general terms, access shall be granted to information containing mere identification data regarding the organisation, operations or public activities of the body, unless in a specific case there is an overriding interest in protecting personal data or another constitutional right.
 - d When assessing the possibility of disclosure of personal data, public authorities need to measure the public interest of disclosing this information and the rights of the affected party whose data appear in the information requested, particularly their fundamental right to personal data protection.
- Other similar examples can be found in the FOI laws in Belgium, Croatia, Germany, Italy, the Netherlands, Poland, Slovenia, Sweden and the United Kingdom. It should also be noted that there are examples of FOI laws where access to personal data is fully excluded, as in the case of Bulgaria and Malta. Additionally, in the case of Hungary the freedom of information and personal data protection are regulated by one and the same law - *Act CXII of 2011 on the right to informational self-determination and on the freedom of information*.⁷⁴

⁷⁴ For the Hungarian Act CXII of 2011 on the right to informational self-determination and on the freedom of information, please consult: https://www.naih.hu/files/Privacy_Act-CXII-of-2011_EN_201310.pdf.

d Internal deliberations for decision-making

In the fourth category, restrictions of disclosure are granted to different types of notes, drafts, opinion papers, summaries, internal communications and reports, or exchanged between administrative bodies or entities. For example:

- The Hungarian FOI law states that:

“(5) Any data compiled or recorded by an organ performing public duties as part and in support of its decision-making process within the limits of its powers and duties shall not be disclosed for ten years from the date it was compiled or recorded. After considering the weight of public interest with respect to granting or denying access, the head of the organ that processes the data in question may permit access.

(6) A request to access data underlying a decision may be dismissed after the decision is adopted but within the time limit referred to in paragraph (5), if the data underlies future decisions, or access to it would jeopardise the lawful functioning of the organ performing public duties, or would jeopardise the performance of its duties without any undue external influence, such as, in particular, the free expression of the standpoint of the organ which generated the data during the preliminary stages of its decision-making process.

(7) The time limit for the restriction of access to certain specific data underlying a decision as specified in paragraph (5) may be reduced by law”.

- The ECB FOI Law provides that *“Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the ECB or with NCBs shall be refused even after the decision has been taken, unless there is an overriding public interest in disclosure”.*
- Other similar examples can be found in the FOI laws in Belgium, Croatia, Czech Republic, Germany, Ireland, Luxembourg, Malta, the Netherlands and Slovenia.
- It should also be noted that there are national FOI laws where such internal deliberations for decision-making are fully excluded. This is the case in France, where FOI law *“does not apply to documents preparatory to an administrative decision while it is being prepared”*, and also in Finland, where the FOI law applies to official documents.
- The Finnish FOI Law states that *“the following are deemed not to be official documents:*

(1) a letter or other document sent to a person in the service of an authority or to an elected official because of another task performed or position held by the recipient;

(2) notes kept by a person in the service of an authority or a person commissioned by an authority and such drafts which have not yet been released for presentation or other consideration;

(3) documents procured for in-service training, information retrieval or any other comparable internal activity of an authority;

(4) a document given to an authority for the performance of a task on behalf of a private party, or prepared for this purpose;

(5) a document left with or handed in to an authority as lost property”.

Inadmissibility reasons

In addition to the exemptions and exclusions described above, some of the FOI laws analysed provide various additional reasons for when the access request is inadmissible. Some examples are:

- requests are wilful or manifestly abusive in terms of their number, or their systematic or repetitive nature (e.g. Austria, Belgium, Croatia, Spain and Luxembourg);
- information was disclosed to the applicant within the last 6 months (Bulgaria);
- the request relates to a document which is already published (Luxembourg);
- the request refers to information which would require a previous action of redrafting in order to be disclosed (Spain);
- if it is deemed that there is no basis for amending or correcting the given information (Croatia).

It should be noted that the distinction between exclusions, exemptions and reasons for inadmissibility is fluid as there are cases in which one type of cause is treated as an exclusion in one country, as an exemption in another and as a reason for inadmissibility in a third country. For example, the French FOI law “*does not apply to documents preparatory to an administrative decision while it is being prepared*” (exclusion), the Portuguese FOI provides that “*access to administrative documents preparatory to a decision may be deferred until the decision is taken or a year has elapsed after its preparation, whichever first occurs*” (exemption) whereas the Spanish Law on Transparency states that requests “*referring*

to information that is being drafted, or to auxiliary or supporting information, such as the content of notes, drafts, opinion papers, summaries, internal communications and reports, or exchanged between administrative bodies or entities” shall be considered inadmissible.

Partial disclosure and other interesting features

Most of the FOI laws analysed provide for partial disclosure. Thus, if only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released (e.g. Belgium, Bulgaria, Czech Republic, Denmark, Germany, Ireland, Malta, Portugal, Slovenia, Spain and the ECB).

Some interesting features noted during the analysis include the following:

- The Croatian and the Irish FOI laws provide that the applicant has the right to seek amendment of a record that contains incomplete, incorrect or misleading personal information.
- The Swedish FOI law lists the preservation of animal or plant species as an interest that may be protected by keeping official documents secret.
- The Irish FOI states that the public authority may refuse access if disclosure of information contained in the record could reasonably be expected to prejudice the well-being of a cultural, heritage or natural resource or a species, or the habitat of a species, of flora or fauna.
- The Belgian FOI mandates that requests concerning the fundamental rights and freedoms of the public shall be rejected unless there is an overriding public interest in disclosure.

Time limitations applied to exemptions⁷⁵

The NCBs/NCAs were asked in the questionnaire whether there are time limitations that apply in the case of exemptions to the right of access and whether the information is automatically released after the required time has elapsed.

On that particular question, 20 NCBs/NCAs stated that there are no time limitations applied to the exemptions found in the FOI laws. Additionally, three NCBs/NCAs noted the application of general archiving rules. Lastly, the NCBs/NCAs in the following countries confirmed the existence of time limitations applied to the FOI exemptions:

- Bulgaria: According to Article 13 (2) (2) of the Bulgarian FOI law, *“The access to official public information may be restricted when it: contains opinions and*

⁷⁵ Please note three institutions did not provide information on this issue.

*positions in connection with current or forthcoming negotiations, kept by the body or on its behalf, as well as information related to them, and has been prepared by the administrations of the respective bodies. The restriction under para. 2 may not be applied **after 2 years** from the creation of such information”.*

- Croatia: The Croatian FOI law provides in Article 15 that:

*“(1) Public authority bodies shall restrict access to information relating to any procedures held by the competent authorities in preliminary and criminal procedures **for the duration** of such procedures. [...]*

*(2)(6) Public authority bodies may restrict access to information if access to information has been restricted pursuant to international treaties, or pertains to information arising in procedures of concluding or acceding to international agreements or negotiations with other countries or international organisations, **until the completion** of such proceeding, or pertains to information arising in the area of diplomatic relations; [...]*

(6) Information restricted due being protected by regulations governing intellectual property rights shall become publically available when so determined by those who might suffer damages due to its disclosure, but no longer than within a period of 20 years from the date of generation of the information, unless a longer period of time is stipulated by law or other regulation”.

- Estonia: According to § 40 *Terms of restrictions on access* of the Estonian FOI law:

*“(1) A restriction on access to information intended for internal use applies as of the preparation or receipt of the documents for as long as necessary or until the arrival of the event, but **not for longer than five years**. The head of an agency may extend the term by up to five years if the reason for establishment of the restriction on access continues to exist.*

*(2) A restriction on access to documents pertaining to state supervision, administrative supervision and supervisory control and preparation of individual decisions of executive power **applies until adoption of a decision** unless another reason to restrict access to the information exists.*

*(3) A restriction on access to information classified as internal which contains private personal data applies for **75 years** as of the receipt or documentation thereof or for **30 years** as of the death of the person or, if it is impossible to establish death, for **110 years** as of the birth of the person”.*

- Finland: The Finnish FOI law in Section 31 *Declassification of an official document* (495/2005) states that *“an official document shall no longer be secret when the*

period of secrecy provided in an Act or ordered on the basis of an Act has ended or when the authority which has ordered the secrecy of the document has revoked that order". Furthermore, it provides maximum periods for different documents e.g. official documents- 25 years unless otherwise provided or ordered on the basis of law, a document for the protection of private life shall be kept secret for 50 years after the death of the person whom the document concerns or, if the time of death is unknown, for 100 years.

- France: The French FOI law in Article L311-8 provides that the non-disclosed documents become accessible according to the provisions of the French Heritage Code (Code de Patrimoine), which sets different time limitations according to the nature of the information, from **25 years** (money and public credit for example) to **100 years** (national security).

- Latvia: The Latvian FOI law in Sections 5(4) and 8 (3) states that the determination of, respectively, restricted access status or only for official use status of the information can be set at **1 year**.

- Portugal: The Portuguese FOI law provides in Article 6 that:

"3. Access to administrative documents preparatory to a decision may be deferred until the decision is taken or a year has elapsed after its preparation, whichever first occurs.

4. Access to the content of audits, inspections, investigations or inquiries may be delayed until a decision to initiate disciplinary proceedings is taken. [...]

7. Administrative documents shall be excluded from access, for the time strictly necessary to protect other legally relevant interests, by decision of the competent authority, whenever they contain information likely to:

a) affect the effectiveness of monitoring or supervision tasks, including monitoring or supervisory plans, methodologies and strategies; or

b) affect the safety or the operational capability of the Army, the intelligence services, or the criminal investigation bodies; or

c) cause serious and difficult to reverse damages to assets or patrimonial interests of third parties that are superior to the assets and interests protected by the right of access to administrative information".

- Sweden: The Swedish FOI law sets different secrecy periods, which vary from **2 to 70 years**, depending on the interest to be protected. For the protection of a private party's personal affairs, the secrecy period is usually **50 or 70 years** while, as regards public or private parties' financial circumstances, it is often **20 years**.

- United Kingdom: Section 63 of the British FOI Law provided a comprehensive list of expiration time limits of various FOI exemptions. As it was noted by the BoE, certain exemptions do not apply to historical records. Originally, a historical record was a record over 30 years old, although this has now been amended to **20 years** by the Constitutional Reform and Governance Act 2010. This reduction is being phased in gradually over ten years. In effect, from the end of 2013 the time limit is 29 years. It will reduce by another year every year until it reaches 20 years at the end of 2022. Other exemptions expire after **60 or 100 years**.
- ECB: The ECB FOI law states in Article 4(6) that *“the exceptions as laid down in this Article shall only apply for the period during which protection is justified on the basis of the content of the document. The exceptions may apply for a maximum period of **30 years** unless specifically provided otherwise by the ECB’s Governing Council. In the case of documents covered by the exceptions relating to privacy or commercial interests, the exceptions may continue to apply after this period”*.

3.9 Basis for non-disclosure and treatment of supervisory information

Secrecy and confidentiality of information is the most important exclusion on which the institutions base their non-disclosure decisions.

The NCBs/NCAs were asked about the exemptions they mostly rely on when deciding on non-disclosure of information. Their answers⁷⁶ were grouped in line with the types of exemptions described in Section 3.8 of this report. The result is depicted in Chart 6. It should be noted that 17 NCBs/NCAs provided multiple bases for non-disclosure in their responses.

In terms of the **basis for non-disclosure**:

- 31 NCBs/NCAs reported not disclosing information based on the secrecy and confidentiality of information basis. This included specifically the duty of professional secrecy or confidentiality of information provided for in the banking and statistics laws.
- Furthermore, 14 NCBs/NCAs stated that the reason for not granting access to information is the privacy and integrity of the individual, namely data on private individuals, including financial and relationships information. The requested documents contain data on the annual income or net worth of a person, data on the income and assets on which a subsidy or benefit is based, or data that otherwise describe the economic situation of a person.

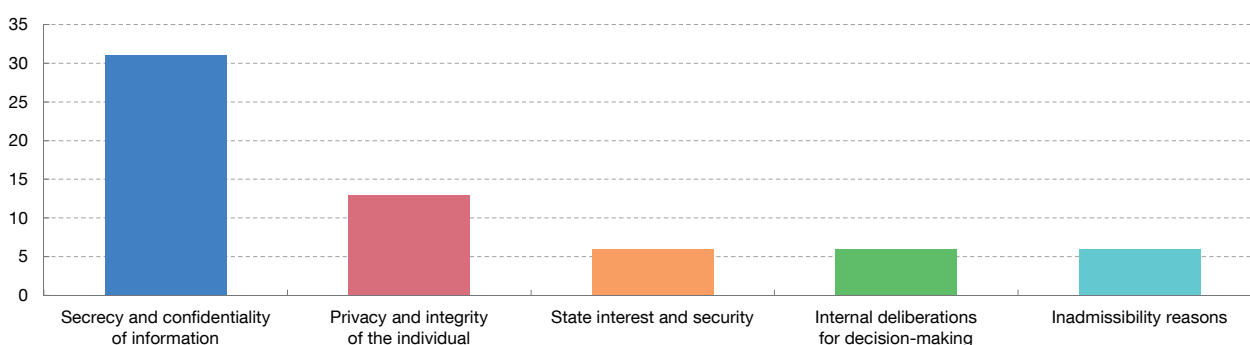
⁷⁶ Please note that five institutions either did not give a specific basis for non-disclosure or did not provide any information on this issue.

- Next, six NCAs/NCBs declared State interest and security as the reason for non-disclosure of information. This category included the exception regarding the secrecy of deliberations of State decision-making bodies,⁷⁷ protection of the financial, monetary or economic policy of the EU or a Member State, and reasons pertaining to foreign policy interests, including the relationship with other countries or international organisations.
- Additionally, six NCBS/NCAs referred to the category of internal deliberations for decision-making as the reason for refusal to grant access to information. This category included an exception for internal, draft or accompanying documents, and for information relating exclusively to internal instructions and personnel by-laws.
- Finally, six NCBs/NCAs quoted various inadmissibility reasons for rejecting access requests. This category included the exception for requests that are clearly unreasonable, inaccurate or incomprehensible, in addition to cases where the request was too vague, or where the NCB/NCA did not possess the information, and also where the document requested is publicly available or will be published within three months.

Further, the NCBs/NCAs responded to a question about the treatment of supervisory information in the context of the right of access. All of the institutions referred to general provisions in their national FOI laws that exempt from disclosure information that is considered a professional secret. The confidential status of the supervisory information is, as seen in Section 2.3 of this report, in turn derived from:

Chart 6

BASIS FOR NON-DISCLOSURE (a) (b)



SOURCES: ESCB/SSM institutions (Annex 2).

a Institutions could provide multiple bases for non-disclosure in their responses.

b Five institutions either did not give a specific basis for non-disclosure or did not provide any information on this issue.

⁷⁷ One of the NCBs/NCAs stated that this exception can be applied to the deliberations within the executive committee insofar as discussions within this committee regard policy issues.

- CRD IV⁷⁸ (Article 53 (1) related to professional secrecy) and its national implementation laws.
- Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions (SSM Regulation). In particular, Article 27 related to professional secrecy and exchange of information.

The ECB additionally pointed out that regarding the exception for the non-disclosure of supervisory information, the ECB usually applies Article 4(1)(c) of Decision of the ECB of 4 March 2004 on public access to ECB documents (ECB/2004/3) and is relying on this provision to protect confidentiality of supervisory information.

3.10 Reasoning a non-disclosure decision

Almost all institutions noted that, either on the basis of their transparency laws or administrative code, their administrative decisions need to provide reasoning.⁷⁹ In particular:

- The Austrian NCA and NCB stated that the initial decision to deny disclosure does not have to be reasoned. If, following the initial decision, the applicant requests an administrative appealable decision, this decision would need to be reasoned according to general principles of administrative procedure. However, the applicant may in the initial request ask already for an administrative decision and consequently, in such a case, an unreasoned non-disclosure decision would not be possible.
- The Spanish NCB/NCA, the French NCA and the French NCB have a month to rule on a request (acceptance or refusal). After the one-month period has elapsed, the silence of the institutions amounts to an implicit refusal of the request. In that case, there is no requirement to provide reasons. In addition, in the case of the French NCA and the French NCB, the applicant can then request an administrative decision within the time limit for bringing an action, which would have to be reasoned.
- Five institutions reported having the possibility to issue a “neither confirm nor deny” decision. The Irish NCB/NCA specified that it can issue such decision in relation to the following exemptions from the FOI Act Sections:⁸⁰ 28 Meetings of the Government; 31 Parliamentary, court and certain other matters; 32 Law enforcement and public safety; 33 Security, defence and international relations; 35 Information obtained in confidence; 36 Commercially sensitive information; and 37 Personal information.

⁷⁸ For CRD IV, please consult: <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32013L0036>.

⁷⁹ Please note that four institutions did not provide a conclusive “Yes/No answer” to this question.

⁸⁰ For the Irish FOI Act, please consult: <http://www.irishstatutebook.ie/eli/2014/act/30/section/12/enacted/en/index.html>.

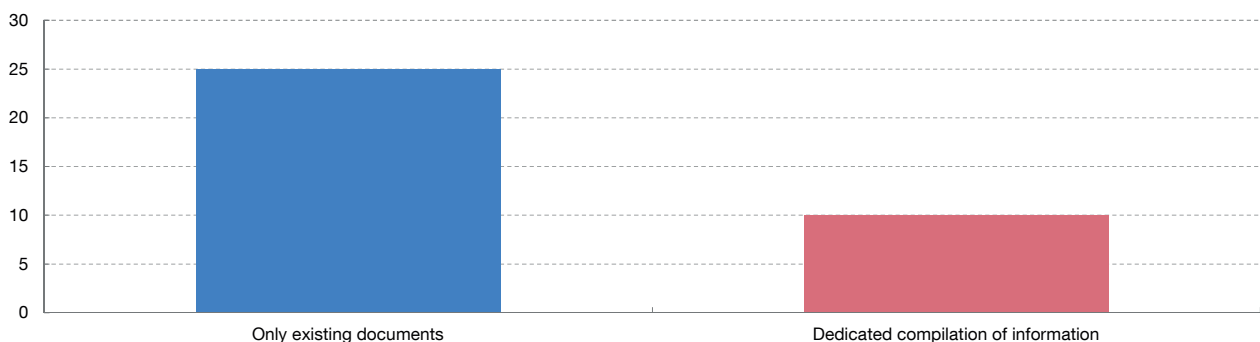
3.11 Disclosure of existing documents vs preparation of a dedicated compilation

Regarding the scope of the right to access (see Chart 7):⁸¹

- 25 institutions reported that there is no obligation to prepare any dedicated compilation to fulfil a request for access and they grant access only to existing documents. Specifically, the Greek NCB/NCA stated that access is granted either by studying the document at the premises of the authority or by providing a copy of the document requested. Furthermore, the Croatian NCB/NCA indicated the Croatian FOI law that states the following: “A request for insight into the entire case file, explanation or instructions concerning the exercise of a right or execution of an obligation, conducting an analysis or interpretation of a regulation, or the creation of new information, shall not be considered a request for access to information”. In addition, the Spanish FOI law provides that requests for information shall be denied, if they refer to information which would require a previous action of redrafting to be disclosed. Finally, the ECB noted that even though it is obliged to disclose only existing documents, it tries to provide as much information and help as possible as per the principle of good administration. Information that can be extracted from a database is also deemed a document as per ECJ jurisprudence.
- Ten institutions stated that they might prepare a dedicated compilation or summary of information to fulfil a request for access. However, four of these institutions pointed out that the compilation should not entail a disproportionate effort that goes beyond simple handling and can be done with a limited work effort that is not associated with any notable costs.

Chart 7

DISCLOSURE OF INFORMATION (a)



SOURCES: ESCB/SSM institutions (Annex 2).

a Two institutions did not provide information on this issue.

⁸¹ Please note two institutions did not provide information on this issue.

3.12 Third party consultation⁸²

Almost one-half of the institutions are obliged to consult third parties when the information requested concerns those third parties.

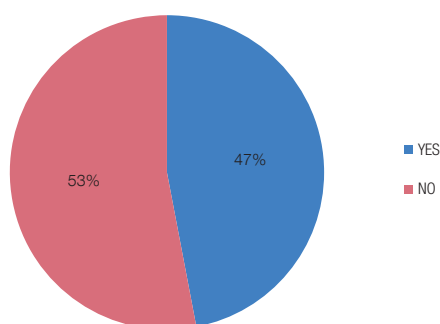
47% of the institutions are obliged to consult third parties when the information requested concerns those third parties. 53% of the institutions reported that there is no legal requirement for them to consult third parties in cases where the information requested concerns those third parties (see Chart 8). There were, however, a number of observations made by the institutions, namely that the intellectual property rights and data protection rules need to be observed. Thus:

- If a copy of a work protected by copyright is transmitted to the applicant, such transmission is conditional upon the authorisation of the person creating the work or the person to whom the rights of the creator have been transferred.
- If the requested information contains personal data of third parties, it is the applicant who must obtain written consent from those third parties. Nevertheless, one institution stated that in practice it often asks third parties for their authorisation.

Furthermore, two institutions also stated that even though not legally obliged, their best practice is to seek third-party views in determining whether the information should be released, especially in cases where the status of the information may be a basis for non-disclosure (e.g. if the document in question is older and contains information on a business secret, and the authority seeks to find out whether or not the information is still considered a business secret).

Chart 8

DOES THE INSTITUTION HAVE TO CONSULT THIRD PARTIES IF THE INFORMATION REQUESTED CONCERNS THOSE THIRD PARTIES? (a)



SOURCES: ESCB/SSM institutions (Annex 2).

a Five institutions did not provide a conclusive “Yes/No answer” on this issue.

⁸² Please note that five institutions did not provide a conclusive “Yes/No answer” on this issue.

It should be noted that none of the institutions, including those obliged to consult third parties, are not in any way bound to abide by the recommendations of the third parties concerned. The ultimate decision rests with the institution concerned and it can grant access if it considers that, in accordance with the applicable legislation, the applicant is entitled to access the document in question.

3.13 Internal review options⁸³

Most of the institutions reported the existence of internal appeal options against the decision on non-disclosure.

Regarding the existence of an internal appeal possibility against the decision on non-disclosure (see Chart 9):

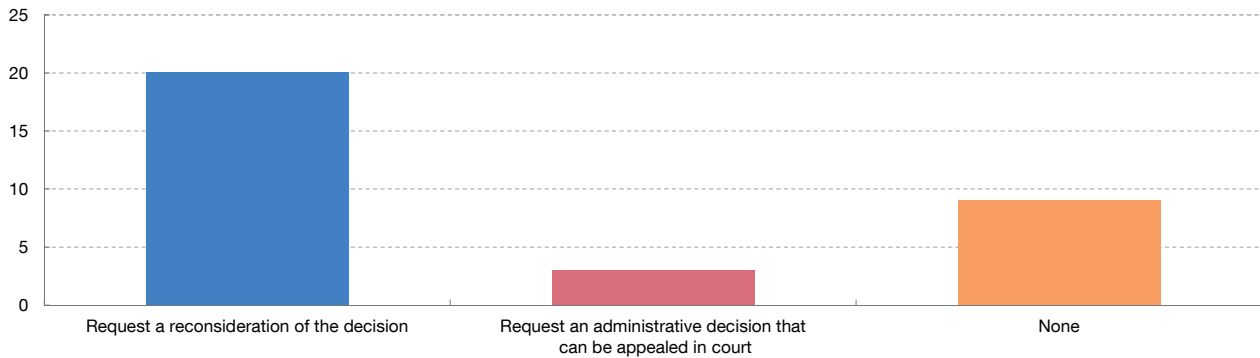
- Most of the institutions reported the existence of an internal appeal option when applicants are not satisfied with the response to their request.
- Three institutions stated that, as they do not issue administrative decisions to respond to requests for access to information, the internal review options imply the need for the requesting party to file an additional request for the institutions to issue an administrative decision in which it confirms non-disclosure or only partial disclosure. To issue such an administrative decision, which can be further appealed in court, the institution needs to re-evaluate internally the request.
- A further 20 institutions indicated the possibility for the applicant to file a request for reconsideration of the decision of non-disclosure or partial disclosure. Lodging such an administrative appeal requires the institution to review the case legally and objectively. In some cases, the decision is reviewed by a more senior or qualified official/staff member, while in others it is handled by a specific permanent unit (board of review, committee or transparency officer) and there are also institutions where the internal appeals are directed to the Executive Boards to decide on.

The Belgian NCB/NCA and the French NCB and the French NCA noted that, in parallel to submitting a request for review of the decision, the applicant had to submit a request to the national freedom of information competent authority –the Belgian CADA or the French CADA, respectively– for its opinion. The institution will then be informed about the opinion of the national freedom of information competent authority and only then will issue its response to the request for reconsideration. Those opinions are not binding either in the case

⁸³ Please note that five institutions did not provide clear information on this issue.

Chart 9

INTERNAL REVIEW OPTIONS (a)



SOURCES: ESCB/SSM institutions (Annex 2).

a Five institutions did not provide clear information on this issue.

of the Belgian NCB/NCA or in the case of the French institutions; nevertheless, they are a required pre-judicial step.

- Lastly, nine institutions stated that in the case of their decisions there is no internal appeal option.

3.14 External review options⁸⁴

In terms of external review options, almost all institutions noted that their decisions can be directly appealed in administrative court following the regular administrative law procedure. In particular:

- In the case of the Belgian NCB/NCA, and of the French NCB and the French NCA, the applicant needs to first obtain an opinion from the national authority supervising the right of access, before going to the court.
- In countries where there are national competent authorities supervising the right of access (see Section 2.5 of this report), applicants can also refer their complaint to those authorities, yet in most cases the decisions of those authorities do not have binding powers to overturn non-disclosure or partial non-disclosure decisions of the institutions. Nevertheless, there are some notable exceptions with the Croatian Information Officer conducting tasks of a second instance body in resolving complaints relating to exercising the right of access to Information. This is also the case of Information Commissioners from the United Kingdom, Ireland and Slovenia, who have the powers to overturn the institutions' decisions

⁸⁴ Please note that five institutions did not provide information on this issue.

regarding the right of access. The decisions of those Commissioners are then appealable in court.

- Also, in the case of Malta, applicants have the option to apply to the Information and Data Protection Commissioner for a decision. Where a decision notice has been served, applicants (and the authority) may then appeal to the Information and Data Protection Appeals Tribunal against the notice within 20 working days. Additionally, decisions of the Tribunal are subject to appeal to the Court of Appeal.

4 Policy recommendations and best practices

This chapter takes a closer look at how the institutions implemented the right of access laws requirements as part of their internal operational procedures.

In order to better analyse this issue, the questionnaire used for the purpose of this report asked each of the institutions to describe any internal policies concerning right of access to information that they might have and whether they were in any way impacted by the financial crisis of 2007-2008. Further, the questionnaire tackles the study of questions concerning the internal organisation of handling the requests for access to information, including the existence of a dedicated single point of contact, a dedicated internal unit, record-keeping or the publication of the requested information. Additionally, the institutions were asked to describe the applicable active publicity requirements, including publishing information on the remuneration of high-level officials and the cost of meetings, travel, seminars and other events. This part of the questionnaire concluded with a series of questions about training/information initiatives that they have concerning the right to access information.

4.1 Internal right of access policies⁸⁵

In terms of internal policies on the right of access:

- 17 institutions reported having instituted internal by-laws, policies or procedures that detail the handling of requests for access to information e.g. the means of recording, the unit responsible, coordination and the persons authorised to sign the responses to the requests.
- Additionally, some institutions noted that the internal policies include guidelines on document classification and handling (explaining the basic rules of publicity and how to classify and mark an authority's confidential documents).
- On its website,⁸⁶ the Maltese NCB provides a classification of the document types that are in its possession.
- Two institutions noted that the internal procedures also incorporated the rules concerning access to the ESCB documents.
- Furthermore, five institutions stated that they follow all relevant legal acts without referring to any internal policies or procedures.
- Lastly, 12 institutions stated either that they do not have any additional internal policies concerning access rights or did not give any response.

⁸⁵ Please note that two institutions did not provide information on this issue.

⁸⁶ For a description of the categories of documents held by the Maltese NCB, please consult: <https://www.centralbankmalta.org/freedom-of-information>.

4.2 Impact of the financial crisis of 2007-2008 on the right of access⁸⁷

Regarding the impact of the financial crisis of 2007-2008 on the right of access and internal procedures, only six of the institutions reported experiencing a trend towards increased transparency and interest from the public. In particular:

- The Irish NCB/NCA reported that it became subject to Freedom of Information legislation on 14 April 2015 and the Spanish NCB/NCA noted that the Transparency Law was passed in Spain in 2013.
- Furthermore, the Latvian NCB saw an increase in questions regarding Anti-Money Laundering (AML) and Know Your Customer (KYC) issues.
- The Romanian NCB/NCA focused on strengthening its public communication channels. It has increased its monetary policy transparency by publishing the minutes of the monetary policy meetings and developed other communication channels⁸⁸ in recent years to make its decisions and comments/opinions more accessible and transparent to the Romanian public (e.g. the Romanian NCB/NCA issued more press statements, statistics and editorial comments in order to clarify various specific topics that emerged on the Romanian market such as Greek-owned credit institutions, Swiss franc loans and banking legislation changes).
- The Slovenian NCB/NCA noted that the financial crisis caused new open issues regarding disclosure of documentation related to supervisory procedures to emerge.
- In this same vein the ECB noted that, following the financial crisis, the Decision ECB/2004/3 on public access to ECB documents was amended in 2014 to introduce as a new exception “*the stability of the financial system in the Union or in a Member State*”. Furthermore, with the establishment of the SSM, the same ECB Decision was updated and amended to introduce new exceptions regarding the protection of prudential supervision and the purpose of supervisory inspections.

4.3 Single contact point⁸⁹

Fewer than half the institutions have a single point of contact for requests for access.

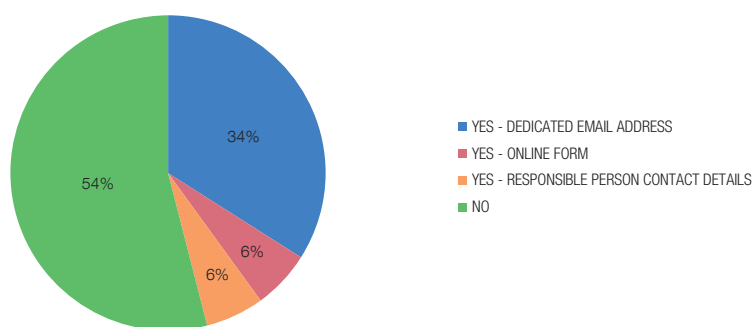
⁸⁷ Please note that two institutions did not provide information on this issue.

⁸⁸ The Romanian NCB/NCA has launched or consolidated different communication channels, such as its blog (<http://www.opiniibnr.ro/>), YouTube channel (since August 2011) (<https://www.youtube.com/user/bnrro>), LinkedIn account (<https://www.linkedin.com/company/bnr>), Twitter account (since March 2011) (https://twitter.com/bnr_ro), and, commencing December 2019, Instagram account (https://www.instagram.com/bancanationala_romania/).

⁸⁹ Please note that two institutions did not provide information on this issue.

Chart 10

IS THERE A DEDICATED SINGLE CONTACT POINT? (a)



SOURCES: ESCB/SSM institutions (Annex 2).

a Two institutions did not provide information on this issue.

As for the existence of a single point of contact for submitting requests for access to public information (see Chart 10):

- 19 institutions reported not having a single point of contact for submitting requests for access to information.
- 16 institutions stated having a single point of contact. Out of those 16 institutions: 12 institutions have dedicated email addresses that applicants are encouraged to use; two institutions use online forms, and another two institutions provide the contact details of the person responsible to be used by the applicants.

All institutions emphasised that they also accept requests received through other means, not only through the single point of contact.

4.4 Units dedicated to handling requests for access to information⁹⁰

Regarding the existence of a separate unit for handling requests for access to public information (see Chart 11):

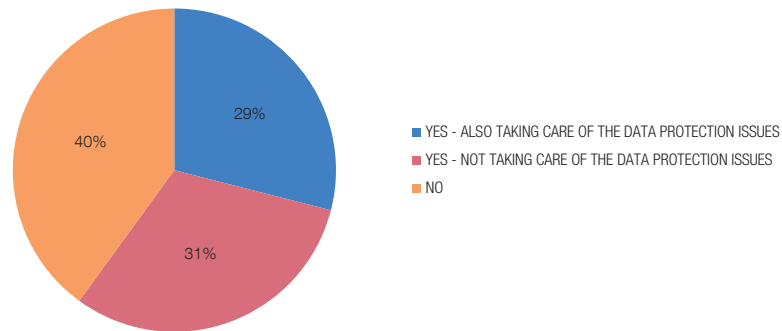
- 14 institutions reported not having a separate unit for submitting requests for access to information.
- 21 institutions reported having a separate unit, which is dedicated to handling requests for access to information. Out of those 21 units, ten also handle data protection issues.

In addition, out of those 21 institutions having a separate unit (see Chart 12):

⁹⁰ Please note that two institutions did not provide information on this issue.

Chart 11

IS THERE A SPECIFIC UNIT DEDICATED TO HANDLING REQUESTS FOR ACCESS TO INFORMATION? (a)

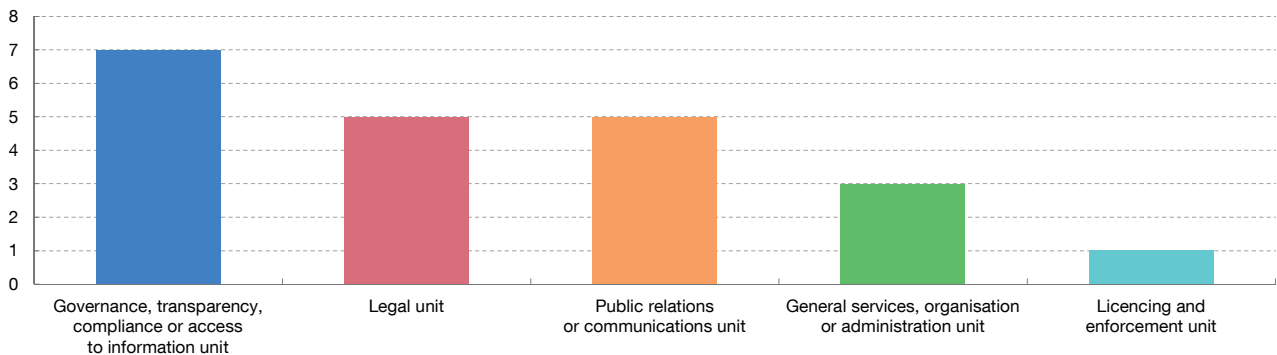


SOURCES: ESCB/SSM institutions (Annex 2).

a Two institutions did not provide information on this issue.

Chart 12

UNIT DEDICATED TO HANDLING REQUESTS FOR ACCESS TO INFORMATION (a)



SOURCES: ESCB/SSM institutions (Annex 2).

a Only including Banco de España and other 20 institutions with a separate unit for submitting requests for access to information.

- Seven units are situated as governance, transparency, compliance or pure access to information units.
- In five cases, it is the legal unit that handles requests for access to information.
- In another five institutions, the responsibility for handling public requests is assigned to the public relations or communications units.
- Three units handling requests for access to information are general service, organisation or administration units.

- In one case, the unit that manages the public requests for access to information is the licencing and enforcement unit.

In terms of the number of persons dedicated to responding to the requests for access to information, the institutions reported a range between 1 to 19 persons. They have also stressed that (i) in most cases the employees are also dedicated to other issues and not only dealing with requests for access to information, and (ii) as requests for access to information usually require cooperation by different departments, it is difficult to provide an absolute number of persons handling responding to these requests.

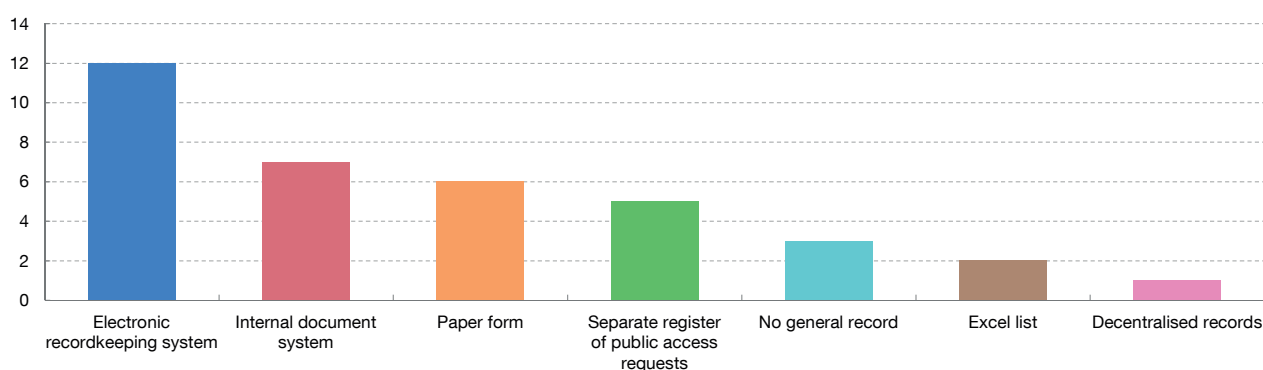
4.5 Preservation and conservation of requests for access to information⁹¹

How institutions keep records of the requests for access to public information varies from those that do not keep any record to those that have a separate, sometimes also open to the public, register for requests for access to information (see Chart 13). Accordingly:

- 12 institutions use an electronic recordkeeping system and an additional two specifically use Excel lists to record requests for access to information.
- Seven institutions stated using their internal document system to record the requests for access to information without specifying the type of system.
- Six institutions reported keeping on record paper documents.
- Furthermore, five institutions stated having a separate register for public requests for access to information.

Chart 13

RECORDS OF PUBLIC REQUESTS FOR ACCESS TO INFOMATION (a) (b)



SOURCES: ESCB/SSM institutions (Annex 2).

a Institutions could provide multiple systems to record the requests in their responses.

b Eight institutions did not provide a conclusive information on this issue.

⁹¹ Please note that institutions could provide multiple systems to record the requests in their responses. In addition, eight institutions did not provide conclusive information on this issue.

- Lastly, three institutions reported not keeping a record and one stated that, as the requests are handled by many departments, recording is decentralised with every unit having its own record. Additionally, the Estonian NCB noted that a request for information does not need to be registered if it is anonymous or is made orally or electronically and is promptly complied with.

4.6 Publishing the requested information⁹²

The information released under the public access rights is *per se* public. However, only 20% of the institutions publish the requested information on an online portal (website). The result is depicted in Chart 14.

In relation to the publication of the information, it should be noted that:

- The ECB has a dedicated website⁹³ under its public register where it publishes all the documents released under the public access regime.
- Similarly, the BoE also noted that it publishes the details of the requests and their responses. The difference here is that not all but rather a selection of public requests and the responses provided are published on the FOI section of the NCB's website.⁹⁴ The BoE publishes requests when it believes there is significant public interest in the subject, which is often indicated by multiple applications regarding the same or similar topics. Currently there are 158 public requests published, the most recent being from April 2020 and the oldest from February 2015.
- The Czech NCB/NCA and the Lithuanian NCB/NCA stated that they also publish the information requested on their general websites.⁹⁵ Additionally, the French NCB and the French NCA stated they may publish the information requested on their general websites, if asked by the applicant.⁹⁶ Nevertheless, none of these websites have a specific section for retrieving that information.
- The German NCB reported publishing in individual cases the information requested on its website, if deemed appropriate. This also holds true for the Portuguese NCB/NCA, which confirmed translating some of the information requested into FAQs.⁹⁷

⁹² Please note that two institutions did not provide information on this issue.

⁹³ For the ECB public register, please consult: https://www.ecb.europa.eu/ecb/access_to_documents/document/pa_document/html/index.en.html.

⁹⁴ For the BoE public register, please consult: <https://www.bankofengland.co.uk/freedom-of-information>.

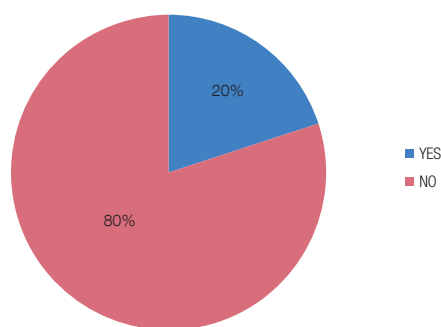
⁹⁵ Please consult: For the Czech NCB/NCA website: www.cnb.cz. For the Lithuanian NCB/NCA website: <https://www.lb.lt/en/>.

⁹⁶ Please consult: For the French NCB website: <https://www.banque-france.fr/>. For the French NCA website: <https://acpr.banque-france.fr/>.

⁹⁷ For the FAQs of the Portuguese NCB/NCA, please see: <https://www.bportugal.pt/perguntas-frequentes>.

Chart 14

DOES THE INSTITUTION PUBLISH THE REQUESTED INFORMATION ON AN ONLINE PORTAL? (a)



SOURCES: ESCB/SSM institutions (Annex 2).

a Please note that two institutions did not provide information on this issue.

- The Irish NCB/NCA⁹⁸ and the Italian NCB/NCA⁹⁹ noted that they are publishing only the register of the requests received without the information that was provided in reply.
- The Latvian NCA pointed out that it is publishing only information requests regarding published procurements under Public Procurement Law on the following portal: www.eis.gov.lv.
- Within the responses received, the Finnish NCB noted that it does not publish the information connected to public requests for access to information but it has digitised and published some archived materials, on this portal: <https://helda.helsinki.fi/bof/handle/123456789/14460?locale-attribute=en>.

4.7 Common transparency portal¹⁰⁰

Several institutions noted the existence of transparency portals in their countries; nevertheless, none of the central banks or competent authorities take active part in publishing on these portals. However, the French Open data portal¹⁰¹ linked to the Webstat platform of the French NCB and the official website of the European Union¹⁰² provides information on the ECB.

⁹⁸ For the FOI disclosure of the Irish NCB/NCA, please consult: <https://www.centralbank.ie/about/freedom-of-information/freedom-of-information-publication-scheme/foi-disclosure-log>.

⁹⁹ For the publication of Italian NCB/NCA's requests for access to information, please consult: <https://www.banqueditalia.it/chi-siamo/procedimenti-amministrativi/Registro-istanze-accesso-civico-generalizzato-1-semester-2019.pdf>.

¹⁰⁰ Please note that two institutions did not provide information on this issue.

¹⁰¹ For the French Open data portal, please consult: <https://www.data.gouv.fr/fr/organizations/banque-de-france-webstat/>.

¹⁰² For the ECB information on the official website of the European Union, please consult: https://europa.eu/european-union/about-eu/institutions-bodies/european-central-bank_en#the-ecb-and-you.

In addition, the Spanish NCB/NCA has addressed its commitment to inform citizens by creating a “Transparency Portal” on its website, whose aim is to broaden and strengthen the institution’s transparency as a mechanism for facilitating control of its public actions.

4.8 Active publicity¹⁰³

In relation to the publication of the information, 28 institutions confirmed that they are required to actively publish a set of information about their activities and six institutions stated there is no such requirement (see Chart 15).

The types of information that were reported as being published by the institutions included (i) information on what the institutions do, how they are organised and how they work; (ii) economic, budget and statistical information and the use of public funds; (iii) information of legal importance; (iv) publications and access to certain information; and (v) information on personal data processing activities.

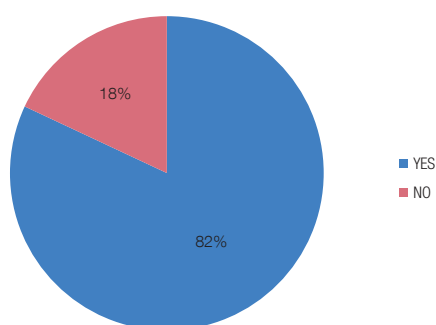
The institutions have stated they will regularly publish information under the following categories:

(i) Institutional and planning information:

- information describing the competences, functions and internal organisation of the institutions, with the names of persons heading the institution and heads of organisational units with their contact information;
- information on the administrative services provided by the institution to the public;

Chart 15

IS THERE A REQUIREMENT FOR ACTIVE PUBLICITY?



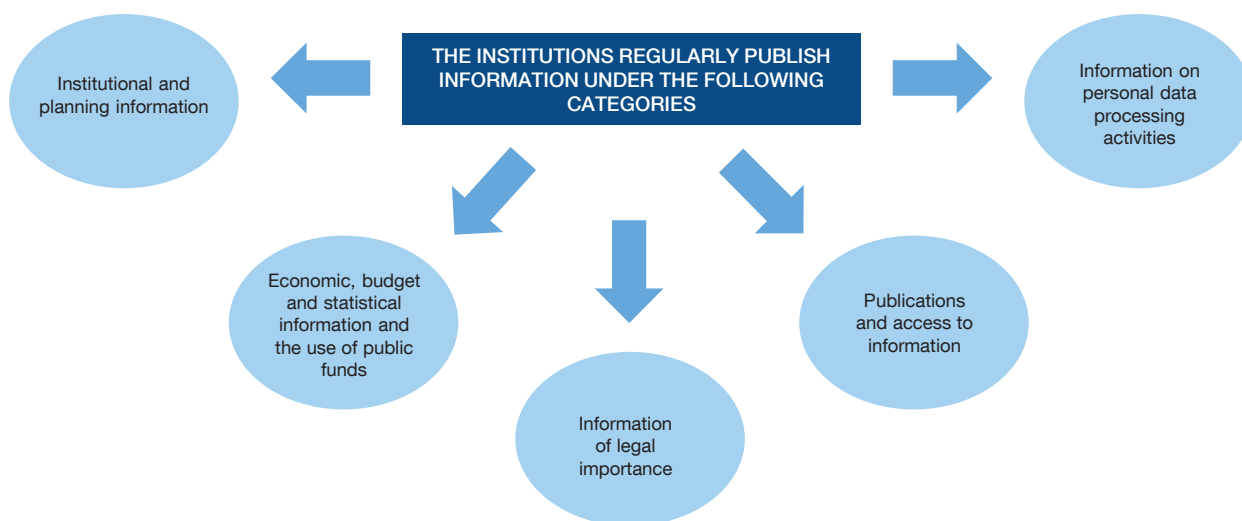
SOURCES: ESCB/SSM institutions (Annex 2).

a Please note that three institutions did not provide a conclusive “Yes/No answer” to this question.

¹⁰³ Please note that three institutions did not provide a conclusive “Yes/No answer” to this question.

Figure 5

ACTIVE PUBLICITY



SOURCES: ESCB/SSM institutions (Annex 2).

- institution’s contact information, including an email;
- basis of appointment, curriculum vitae and gross remuneration of the members of the governing council;
- total number of employees, gross remuneration of high-level officials and average rate of the staff’s attendance on a yearly basis;
- list of the external mandates assigned to the employees, object, duration and related remuneration;
- career vacancy announcements;
- any publishable information related to conflict of interest prevention and ascertainment;
- information on financing sources, annual budget, financial plan or other appropriate documents that determine the revenues and expenditures of the institution, and data and reports on budget execution, financial plans and other appropriate documents;
- the consolidated financial statement of the institution that is certified by an international auditor together with the auditor’s report in accordance with the requirements of the internationally accepted accounting standards;

- information on allocated grants, sponsorships, donations or other aid, including a list of beneficiaries and amounts;

(ii) Economic, budget and statistical information and the use of public funds:

- registers and databases or information on registers and databases;
- official statistics and economic studies;
- information on supply, service and works contracts;
- information on public procurement procedures, tender documents, information on fulfilling contractual obligations, and other information required pursuant to the law governing public procurement;
- information on announced tenders, documents necessary for participation in the tender procedure, and information on the outcome of tender procedures;
- information on contributions to charity initiatives;
- list of real estate assets both owned and leased, in the latter case with the amount of the lease;
- list of the controlling participations in companies and other entities;
- the base interest rate for the relevant period;
- the weekly balance sheet of the central bank, which shall show the position of its basic assets and liabilities of the Issue Department, inclusive of gross international reserves and the total amount of the central bank's monetary liabilities;
- the position of the central bank's basic assets and liabilities at the end of each month, presenting separate balance sheets of the Issue and Banking Departments, an annual financial statement and the profit and loss account of the bank;

(iii) Information of legal importance:

- laws and other regulations relevant to the scope of activity of the institution;
- laws, general acts, ordinances or regulations issued by the institution, which influence the interests of beneficiaries, together with the reasons for their enactment;

- draft proposals of laws and other regulations and general acts subject to public consultation procedures;
- conclusions from official sessions of public authority bodies and the official documents enacted at these sessions, including information on the work of the formal work bodies within their jurisdiction where decisions are made on the rights and interests of beneficiaries;
- information on the decisions of the governing council, unless such decisions contain professional, bank, commercial or other secrets protected by law;
- a general description of the categories of documents held by it;
- a description of all manuals and similar types of documents which contain policies, principles, rules or guidelines in accordance with which decisions or recommendations are made in respect of members of the public (including bodies corporate and employees of the public authority in their personal capacity);

(iv) Publications and access to information:

- information on the manner and conditions of exercising rights of access to and re-use of information in a visible place, including contact details of the information officer, the necessary forms or links to forms, and the level of fees for access to information and re-use of information;
- responses to frequently asked questions, on the manner of submitting requests by citizens and the media, and other information (news, press releases, data on activities), for the purpose of informing the public about their work and exercising their rights and executing obligations;
- annual report, annual plans, programmes, strategies, instructions, work reports, financial reports and other relevant documents referring to activities of the institution;

(v) Information on personal data processing activities:

- the purpose, scope and method of processing personal data, the communication of personal data to third persons, including other agencies, and the making of personal data available to the public, and the right of and procedure for a person to examine data concerning themselves;

It should be stressed that:

- The provisions on active publicity do not apply to information subject to restrictions of access.

- Several institutions noted that the active publicity requirements stem not only from transparency regulations but also from banking law, governance code, civil code, procurement laws, conflict of interest laws and the central banks’ statutes or founding acts.
- In the case of the Croatian NCB/NCA, the law states that the required information shall be published in an easily searchable and machine-readable format on the website of the institution.
- The BoE¹⁰⁴, the Irish NCB/NCA¹⁰⁵, the Spanish NCB/NCA¹⁰⁶, the Czech NCB/NCA¹⁰⁷ and both Maltese institutions (NCA¹⁰⁸ and NCB¹⁰⁹) have specific subsections on their websites where they publish the information required by the relevant freedom of information laws.
- Additionally, the ECB noted that, since its establishment, the ECB has put particular emphasis on its external communication policy, with the aim of enhancing the public’s understanding of the ECB’s policies and decisions. The ECB’s publication activities go well beyond the legal requirements and recommendations or suggestions from stakeholders. In recent years, the European Parliament, European Ombudsman, NGO’s and media have issued recommendations or called upon the ECB to publish declarations of interest and to increase and harmonise the publicly available information on meetings with external parties. Thus, the ECB publishes: declarations of interest (Governing Council and Supervisory Board), board member’s monthly appointment calendars: (Executive Board and Supervisory Board); banking industry, institutional investor and non-financial business sector dialogues and meetings with contact groups. In 2018, as part of its commitment to openness and transparency, the ECB decided to establish a Public Register of Documents. This register will be gradually enhanced and complemented to provide the general public and markets with user-friendly access to documents on the ECB’s policies, activities and decisions in a structured and easily retrievable manner. ECB documents released in the context of requests for public access are gradually included.

4.9 Published information on the remuneration of high-level officials¹¹⁰

Over 50% of the institutions taking part in the survey reported publishing information about the remuneration of at least members of governing bodies and, partially too, other high-level

¹⁰⁴ For the BoE website, please consult: <https://www.bankofengland.co.uk/freedom-of-information>.

¹⁰⁵ For the Irish NCB/NCA website, please consult: <https://www.centralbank.ie/about/freedom-of-information/freedom-of-information-publication-scheme/financial-information>.

¹⁰⁶ For the Spanish NCB/NCA website, please consult: <https://www.bde.es/bde/en/secciones/sobreelbanco/Transparencia/>.

¹⁰⁷ For the Czech NCB/NCA website, please consult: https://www.cnb.cz/en/about_cnb/informace-o-cnb-106-en/.

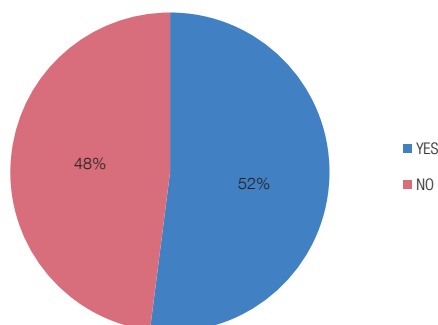
¹⁰⁸ For the Maltese NCA website, please consult: <https://www.mfsa.mt/foi/>.

¹⁰⁹ For the Maltese NCB website, please consult: <https://www.centralbankmalta.org/freedom-of-information>.

¹¹⁰ Please note that four institutions did not provide information on this issue.

Chart 16

DOES THE INSTITUTION PUBLISH INFORMATION ON THE REMUNERATION OF HIGH-LEVEL OFFICIALS AND/OR THE MEMBERS OF GOVERNING BODIES AND/OR OTHER STAFF?



SOURCES: ESCB/SSM institutions (Annex 2).

a Four institutions did not provide information on this issue.

officials (see Chart 16). Most of the institutions stated that they include this information in their annual reports and financial statements. However, the following publish remuneration on their websites:

- The details about Croatian NCB/NCA's governor and vice-governors can be accessed on the following website: <https://www.sukobinteresa.hr/hr/registar-duznosnika>. Search by the name of the institution (Hrvatska Narodna Banka) gives access to detailed information on the precise remuneration received by the high-level officials of the Croatian NCB/NCA.
- The Estonian NCB publishes the remuneration of its president and vice presidents on the following website: <https://www.eestipank.ee/eesti-panga-tippjuhtide-tootasud>. The amounts are broken down into basic salary and premiums and additional benefits.
- The Italian NCB/NCA publishes the remuneration of the governor, general directors and vice-general directors on this website: https://www.bancaditalia.it/chi-siamo/funzioni-governance/direttorio/Trattamento_economico_Direttorio.pdf, along with the remuneration of heads of structures/departments on this website: <https://www.bancaditalia.it/chi-siamo/personale/retribuzioni/index.html>.
- The Latvian NCB publishes remuneration information on all employee groups on the following website: <https://www.bank.lv/par-mums/parskati/parskats-par-atlidzibu>. The Latvian NCA does the same on the following website: <https://www.fktk.lv/par-mums/fktk-parvaldiba/atlidzibas-sistema/atalgojuma-noteiksana/>. Additionally, all Latvian state officials' yearly income declarations can be accessed in the State Revenue Service database (<https://www6.vid.gov.lv/VAD>).

- The Lithuanian NCB/NCA publishes the information on the average salary for different employee groups on the following website: <https://www.lb.lt/lt/informacija-apie-darbo-uzmokesti>.
- The Portuguese NCB/NCA publishes the compensation of the governor, vice-governor and administrator on this website: <https://www.bportugal.pt/page/remuneracoes-mensais-do-conselho-de-administracao>.
- The Romanian NCB/NCA publishes remuneration on this website: <http://www.bnr.ro/Drepturile-salariale-acordate-in-Banca-Na%c8%9bionala-a-Romaniei-14673.aspx>.
- The Slovak NCB/NCA noted that in its 2019 Annual Report, published in May 2020, for the first time ever, it has disclosed the remuneration of the Bank Board members for the previous year: page 113: https://www.nbs.sk/_img/Documents/_Publikacie/AnnualReport/ARNBS19.pdf.
- The Spanish NCB/NCA publishes the remuneration and other employment conditions for the position of governor, deputy governor and council members of the Governing Council on this website: https://www.bde.es/bde/en/secciones/sobreelbanco/Transparencia/Informacion_econ/Retribuciones_an/Retribuciones_d_1799079ef9b0a41.html.

Additionally, the Finnish institutions (both the NCA and NCB) noted that even though they do not publish the remuneration of their high-level officials, this information is in the public domain and it is available on request from the Tax Administration.

It also should be noted that the French NCB pointed out that in France the remuneration of high-level officials and governance bodies members are determined by French law, according to a common scale for high-level public officials. The same holds true for Luxembourg state officials¹¹¹.

4.10 Published information on the cost of meetings, travel and other institutional events¹¹²

Some institutions noted that they do not actively publish travel expenses information on their websites but include general figures in the budgets, and provide the numbers on requests. This is, inter alia, the case of the ECB, which provided the figure to requests for access to information that can be consulted on the following website:

¹¹¹ General remuneration scales of Luxembourg public servants, according to the categories/careers/fields, are enshrined in the relevant legislation - the "Code de la fonction publique": http://legilux.public.lu/eli/etat/leg/code/fonction_publique/20200101.

¹¹² Please note that three institutions did not provide information on this issue.

- 2018: https://www.asktheeu.org/en/request/travel_expenses_of_ecb_president.
- 2019: https://www.asktheeu.org/de/request/travel_expenses_of_ecbs_presiden.

There are, however, institutions that provide the public with detailed, readily accessible information on the travel expenses of their staff:

- The official travel expenses of officials of the Croatian NCB/NCA, including information on the name, location and business event organiser, the participation status of CNB officials, followed by information on accommodation and transport costs and the holder of these costs, as well as per diem, is available on this website: <https://www.hnb.hr/javnost-rada/informacije-i-ocitovanja>.
- The Irish NCB/NCA publishes detailed travel expenses for each of its senior staff members as well as overall costs for all the staff supplemented by information on the numbers of tickets bought and destinations on this website: <https://www.centralbank.ie/about/freedom-of-information/freedom-of-information-publication-scheme/foi-disclosure-log/travel-expense>.

4.11 Right of access training¹¹³

None of the institutions reported providing any specific training to the public on the right of access. Nevertheless:

- The Estonian institutions (NCA and NCB) noted that they host so called “Open Door Days”, where they inform the public on their activities. They also host specific information days e.g. information day to introduce the consumer website <https://minuraha.ee/>
- The Lithuanian NCB also organizes annually an “Open day” for the general public. During these event the NCB’s premises are open to the general public, the staff inform visitors about the activities of the Lithuanian NCB and it is possible to meet the Governor.
- The Spanish NCB/NCA reported that sessions on transparency are part of general training initiatives on governance within the institution.
- Additionally, the Luxembourg NCA emphasised that even though they do not have any internal training on access, on a day-to-day basis, the legal department (general affairs) does its best to raise other departments’ awareness of the importance of maintaining professional secrecy.

¹¹³ Please note that three institutions did not provide information on this issue.

4.12 Report/recommendations assessing access right implementation

Several institutions noted that the current information concerning access right implementation in their respective countries can be found in the publications and annual reports of the competent authorities tasked with overseeing this matter e.g. the British ICO¹¹⁴, the French CADA¹¹⁵ and the Estonian Information System's Authority¹¹⁶. Additionally:

- The French NCA referred an analytical report¹¹⁷ on open data best practices in Europe's Top Performers: Ireland, Spain and France, published in April 2019 in the European Data Portal. It describes France as one of Europe's most mature open data countries, mentioning too the UNESCO report¹¹⁸ published in 2014 on the latest progress in standards and practices concerning the right of access to public information. It highlighted the fact that, in respect of France, CADA's opinions were generally followed by the related administrations. The mandatory prior administrative appeal was also considered effective and was said to avoid congestion in courts.
- The Austrian NCB reported on the interest group called "Forum Informationsfreiheit",¹¹⁹ which is actively petitioning for increasing the freedom of information in Austria.
- Similarly, the Croatian NCB/NCA referred to a Croatian civil society initiative named "ImamoPravoZnati" (We have the right to know),¹²⁰ which aims to provide citizens with more transparent and easier access to public authorities' information through the Internet. This platform¹²¹ automates submitting requests for access to information to publicly funded bodies. All questions submitted through this website and responses from the public authorities are published for everyone to consult. This portal also has its equivalent for the United Kingdom authorities¹²² and the EU bodies¹²³. The goal of these platforms is to make it easier for citizens to seek information out of public interest, and to contribute to the transparency and political accountability of public authorities.

114 For the British ICO website, please consult: <https://ico.org.uk/about-the-ico/our-information/annual-reports/>.

115 For the French CADA website, please consult: <https://www.cada.fr/lacada/rapports-d-activites>.

116 For the Estonian Information System's Authority website, please consult: <https://www.ria.ee/en/information-system-authority/publications.html>.

117 For more information on the European Data Portal, please consult: https://www.europeandataportal.eu/sites/default/files/analytical_report_13_open-data-best-practices-top-performers.pdf.

118 For more information on the UNESCO report, please consult: <https://unesdoc.unesco.org/ark:/48223/pf0000226875>.

119 For more information on the interest group "Forum Informationsfreiheit", please consult: <https://www.informationsfreiheit.at/>.

120 For more information on the Croatian civil society initiative "ImamoPravoZnati", please consult: <https://imamopravoznati.org/>.

121 The imamopravoznati.org platform is maintained by volunteers from the expert group Code for Croatia with the expert advice of GONG (civil society organisation - <https://www.gong.hr/en/about-gong/what-is-gong/>).

122 <https://www.whatdotheyknow.com/>.

123 <https://www.asktheeu.org/>.

- Furthermore, the Lithuanian NCB/NCA indicated the Transparency International report on Open Data and political Integrity in the Nordic Region¹²⁴.
- Lastly, the ECB noted the report of Transparency International EU on the ECB “Two sides of the same coin? Independence and accountability of the ECB” published by the Access Info Europe in September 2013.¹²⁵

4.13 E-government initiatives

The institutions reported the following e-government initiatives in the area of access to information:

- The Croatian NCB/NCA noted that it is submitting public documents and information to the Central Government Office for the Development of the Digital Society, which publishes them in the Central Catalogue of Official Documents of the Republic of Croatia. This e-government initiative aims to ensure the availability and re-use of public documents and information
- The Estonian institutions (both NCB and NCA) indicated the e-identity¹²⁶ initiative of their government, by which every Estonian, irrespective of their location, has a state-issued digital identity. This initiative enables citizens to identify themselves providing a digital signature by using their ID-card, Mobile-ID or Smart-ID, so they can safely use e-services. The Estonian NCB noted that it has launched a submission portal where this digital signature is used for identification.¹²⁷
- The French NCB has set up a statistics portal – Webstat¹²⁸ – where it is providing free access to thousands of statistics, grouped in time series on a multitude of themes. Additionally, researchers can also freely access more granular data through the Open Data Room.
- The German NCB reported being within the scope of application of the German Act to promote electronic government¹²⁹ (with the exception of section 12a of the Act). This regulation requires the authorities, inter alia, to open up a point of access for the transfer of electronic documents, including such documents provided with a qualified electronic signature. Additionally, at the federal level, they have to offer a possibility to use electronic proof of identity in administrative procedures in which they are required to establish a person’s identity by virtue

¹²⁴ For more information on the Transparency International report on Open Data and political Integrity in the Nordic Region, please consult: https://www.transparency.it/wp-content/uploads/2019/11/Open_Data_Report.pdf.

¹²⁵ For more information on this report, please consult: https://transparency.eu/wp-content/uploads/2017/03/TI-EU_ECB_Report_DIGITAL.pdf.

¹²⁶ For more information on Estonian e-identification, please consult: <https://e-estonia.com/solutions/e-identity/id-card/>.

¹²⁷ For more information on the Estonian portal, please consult: https://aruandlus.eestipank.ee/epakpui_ext/login#loaded.

¹²⁸ For more information on the French Webstat portal, please consult: <http://webstat.banque-france.fr/fr/>.

¹²⁹ For more information on the German Act to promote electronic government, please consult: <http://www.gesetze-im-internet.de/egovg/>.

of a legal provision or in which they consider identification to be necessary on other grounds. They should also provide for the possibility of paying charges or amounts receivables in connection with an administrative procedure by means of electronic payment. According to this Act, the federal authorities should also keep their records in an electronic form.

- Both the Latvian NCA and NCB reported cooperating in the e-government portal of public services, which offers Latvian citizens and entrepreneurs an Official Electronic Address (e-address)¹³⁰ to safely communicate with the official authorities (including Latvian NCA and NCB). The e-address serves as a unified communication platform for all public authorities. By creating an e-mail address, the user will receive all the information from state and municipal authorities, which was previously sent by mail to the declared address. Additionally, the Latvian NCB noted that it is also possible to obtain Credit Register data using the e-government portal.¹³¹
- The Luxembourg NCA reported having developed a dedicated website (<https://www.letzfin.lu/>) and two mobile applications named “Lëtzfín budget” and “Lëtzfín pocket money” to foster financial education, which is part of its official mission. In addition, the Luxembourg NCA is developing e-communication tools for supervised persons (e.g. in the context of authorisations).
- The Portuguese NCB/NCA is providing online access to the Central Credit Register¹³², and is also participating in the following two recent e-government initiatives: the on-line complaints system¹³³ and the electronic transmission of attachment orders to seize banking deposits.
- Additionally, the Dutch NCB noted that the new transparency bill¹³⁴ that is currently under discussion in the Netherlands encourages the official authorities to improve their digital information management. At this time there are no specific recommendations; but the Dutch NCB is following developments on this topic and will implement the government recommendations if applicable.
- The Romanian NCB/NCA reported that there is an e-government (www.e-guvernare.ro) initiative but the NCB is not participating in it.

130 For more information on the Latvian e-government portal of public services, please consult: <https://www.latvija.lv/en/BUJEadrese>.

131 For more information on the Latvian Credit Register data, please consult: <https://www.latvija.lv/ppk/dzives-situacija/apakssituacija/p2001/procesaapraksts>.

132 For more information on the Portuguese Central Credit Register, please consult: <https://www.bportugal.pt/en/area-cidadao/formulario/231>.

133 For more information on the Portuguese on-line complaints system, please consult: <https://www.livroreclamacoes.pt/inicio>.

134 For more information on the Dutch new transparency bill, please consult: <https://www.digitaleoverheid.nl/overzicht-van-alle-onderwerpen/democratie/democratie-in-actie/wet-open-overheid/>.

- The Spanish NCB/NCA launched in July 2019 a data laboratory (BELab) to provide access for the research community to high-quality microdata compiled by the institution. BELab makes microdata on non-financial corporations reporting to the Central Balance Sheet Data Office available to researchers.
- It should also be noted that the ECB is providing open access to a wide range of statistical information through its Statistical Warehouse website.¹³⁵

135 For more information on the ECB Statistical Warehouse website, please consult: <https://sdw.ecb.europa.eu/>.

5 Statistics for the period 2016-2019

This chapter covers some of the key data reported by the institutions, such as those relating to topic categories and applicant types and number of requests for access to information for the period 2016-2019. Given that some of the institutions do not record these requests, they were also unable to provide any statistics.

5.1 Topic categories and applicant types

The access to information requests cover almost all types of activities undertaken by the institutions. The topics given as examples in the questionnaire can be broadly assigned to six categories: banking supervision issues, central bank issues, statistical information, human resources (HR) issues, procurement and concluded contracts, administrative and operating expenses, and international and European relations (see Chart 17).¹³⁶

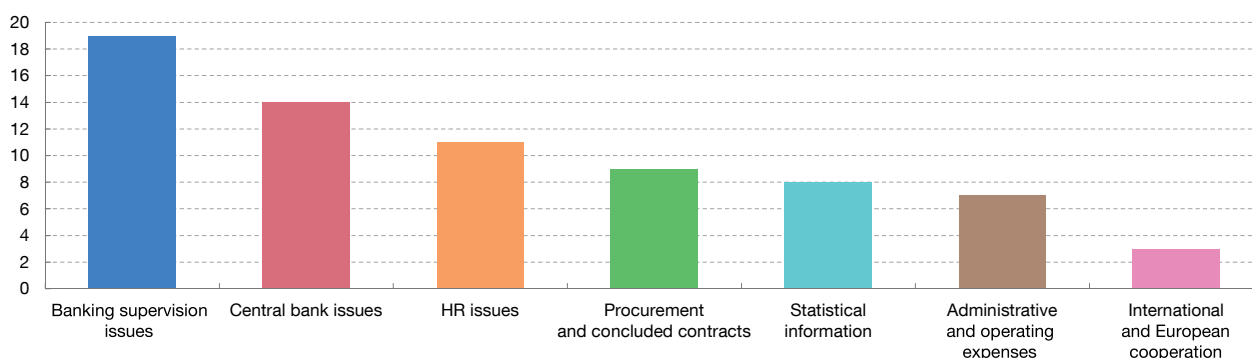
As regards the types of activities undertaken by the institutions:

- 19 institutions reported having received requests for access to information concerning their banking supervision and resolution activities, including inspection reports, reports on the financial and prudential situation of specific credit institutions (inter alia, M&As, share capital increases, F&P assessment, remuneration policy and internal governance of supervised banks, liquidation and resolution activities, CHF loans).
- 14 institutions listed various central bank issues as being the topic for requests for access to information. The questions related mainly to Eurosystem monetary policy (e.g. CSPP), payment systems and market infrastructure (e.g. Target 2), cash payments (e.g. counterfeiting), information concerning the reference exchange rates published by the central bank, market and treasury operations, banks' credit policy and the provision of liquidity/ELA from the central bank, and numismatics or gold reserves and their storage. Additionally, seven institutions stated that they were asked to provide various sets of statistical information.
- Nine institutions received requests for access to information concerning procurement activities and concluded contracts.
- Eight institutions noted applicants were interested in several HR topics such as remuneration and wages, training and hiring, equal opportunities plans and staff appointment schemes. There were also questions concerning the ethical framework.

¹³⁶ Please note that institutions could provide multiple topics in their responses. In addition, ten institutions did not provide any specific topics, with five stating they do not have any statistics and two noting they receive requests on various topics.

Chart 17

TOPICS OF THE REQUESTS FOR ACCESS TO INFORMATION (a) (b)



SOURCES: ESCB/SSM institutions (Annex 2).

a Institutions could provide multiple topics.

b Ten institutions either did not provide any information or stated that they do not keep any statistics on the topics.

- Seven institutions were asked about their administrative and operating expenses including travel, receptions, advertising on Facebook and number of computers bought.
- Lastly, three institutions mentioned receiving requests of access to information concerning their international and European relations, including cooperation with other authorities and the IMF.

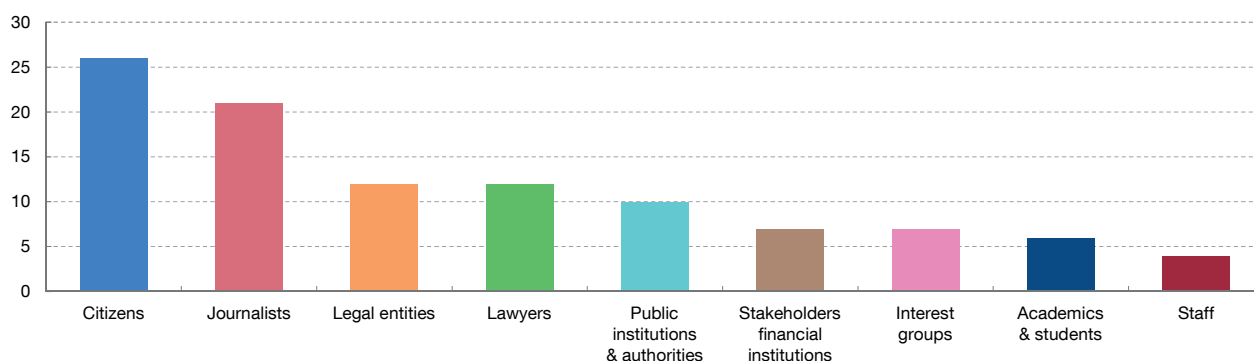
In terms of applicant types (see Chart 18):¹³⁷

- 26 institutions reported receiving requests for access to information from the general public that encompassed national citizens as well as foreigners.
- The second most popular group of applicants were journalists and media reporters, which were named by 21 institutions.
- Next in line were legal entities, including vendors taking part in procurements and lawyers, which were each cited 12 times.
- Ten institutions received requests for access to information from public authorities, such as the police, or representatives of the public, such as members of parliament.
- Different stakeholders of financial institutions, including shareholders, bondholders and unhappy clients, and various interest groups comprising

¹³⁷ Please note that institutions could provide multiple types of applicants in their responses. In addition, seven institutions either did not provide any information or stated that they do not keep any statistics on the types of applicants.

Chart 18

TYPES OF APPLICANTS



SOURCES: ESCB/SSM institutions (Annex 2).

a Institutions could provide multiple topics in their responses.

b Seven institutions either did not provide any information or stated that they do not keep any statistics on the types of applicants.

consumer associations and civil society organisations, were each mentioned seven times.

- Lastly academics, students and specialist were noted by six institutions and staff by four of the respondents.
- It should also be noted that the German NCB listed receiving requests from anonymous applicants.

In terms of differences in treatment of applicants:

- The Latvian institutions noted that the Latvian Freedom of Information Law does not apply to the exchange of information among public authorities and gave the example of the Latvian Police, who were granted access to restricted access information in accordance with the Latvian Credit Institution Law and Latvian Law On Police within the framework of the criminal procedure.
- The Portuguese NCB/NCA also noted that public authorities are in most cases covered by information-sharing legal regimes and not the public right to access.
- Moreover, the Slovenian NCB/NCA stated that questions from journalists are treated differently because of the provisions of Article 45 of the Slovenian Mass Media Act¹³⁸ that regulate the access to media information.

¹³⁸ For information on the Slovenian Mass Media Act, please consult: <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1608>.

- Lastly, the ECB stressed that as regards public requests there are no differences in treatment, but requests from researchers may be dealt with according to archives policies depending on the age of the document. Additionally, the ECB noted that the EU institutions, NCBs/NCAs may consult on or directly transfer to the ECB the requests they receive for public access to ECB documents.

5.2 Requests in years 2016-2019¹³⁹

Between 2016 and 2019, the number of requests for access to information varied significantly across the institutions (see Chart 19):

- Most of the institutions received no more than 50 requests, which translates roughly into no more than one request per month.
- Nevertheless, four of the institutions recorded having received more than 1000 public requests, with the highest number of almost 39,000 requests being received by the Bank of Lithuania.
- In terms of differences between the years, there was no significant change reported by any of the institutions. The German NCA pointed out that they had a case of a sudden increase in requests for access to information in 2014 and 2015¹⁴⁰, which subsided in the following years. In 2014 the German NCA received almost 1900 requests and in 2015 almost 1100, whereas in the following years the number came down to levels of 67-148.
- Nine institutions noted that they did not receive any request for access to information or that they do not keep any statistics.

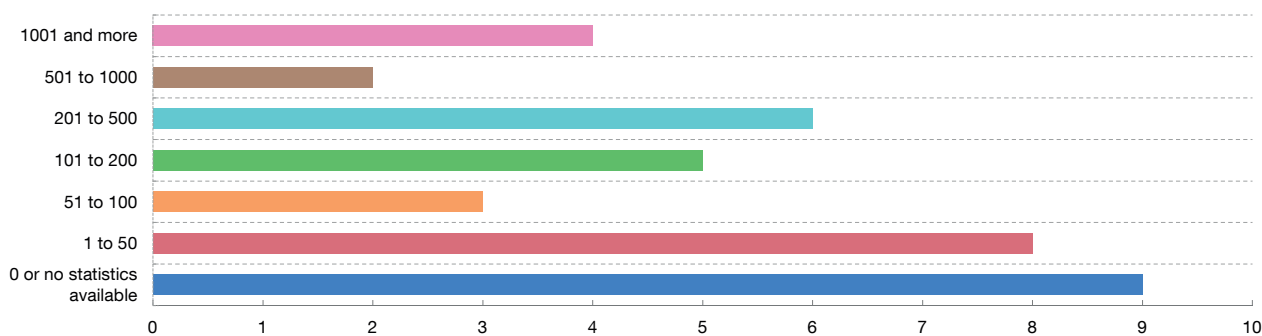
The number of requests accepted as opposed to rejected also differed across the institutions: some stated that only a minority of the requests are rejected; some that they reject 30-50%; and others that consistently rejected more than 60% or more of the requests (see Chart 20).

¹³⁹ Please note that nine institutions indicated that they did not receive any request for access to information or that they do not keep any statistics.

¹⁴⁰ The German NCA explained that there was not a specific topic on the cause of the sudden very high amount of right to access information requests, but a specific group of persons. In the late 1990s and early 2000s, many people lost a lot of money in the grey capital market. They often invested their retirement savings in so-called pyramid schemes without knowing it. The grey capital market is neither regulated nor supervised. Since many such companies, some with more than 20,000 customers, went bankrupt, investors lost most of their savings. These were only partially offset by compensation schemes. Since approximately 2014, a large proportion of the investors affected have been represented by a law firm. These lawyers tried to obtain similar information from the NCA for every single former customer to hold the state liable, although no such claims for damages exist. That could explain why there was a large increase in the number of cases. However, the courts were predominantly of the opinion that submitting a large number of similar information access requests –in the way mentioned above– was an abuse of law by the lawyers. Therefore, the number of applications decreased some years later.

Chart 19

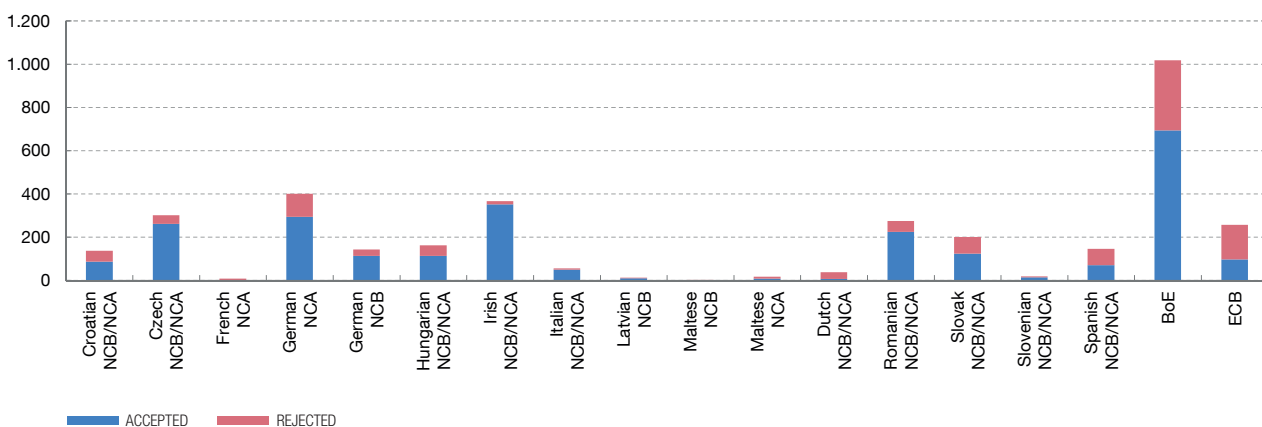
NUMBER OF REQUESTS FOR ACCESS TO INFORMATION RECEIVED (2016-2019)



SOURCES: ESCB/SSM institutions (Annex 2).

Chart 20

TOTAL NUMBER OF REQUESTS (2016-2019)



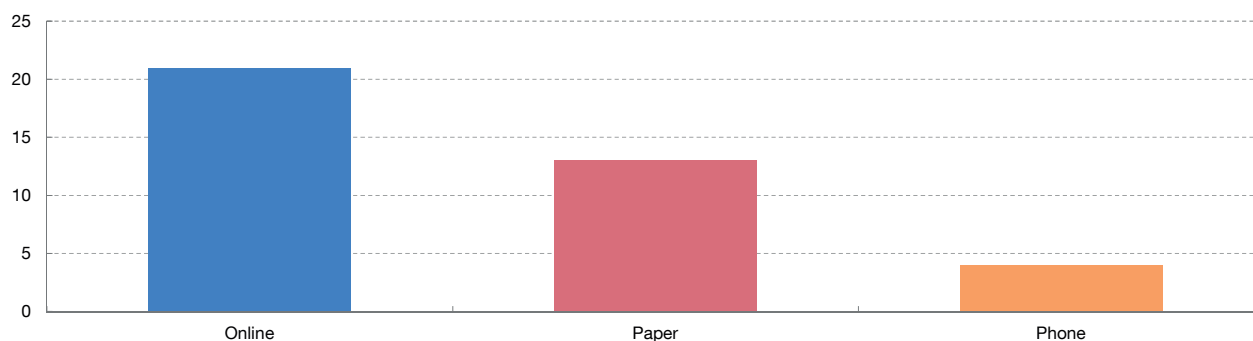
SOURCES: ESCB/SSM institutions (Annex 2).

The reported number of decisions not to grant (full) access to documents that were disputed was low, ranging from 0 to 13 for the full period 2016-2019. Only three institutions recorded higher numbers:

- the Croatian NCB/NCA reported 32 disputed cases in 2019, up from 2 or 3 for previous years;
- the German NCA reported 226 disputed cases in 2016, which then went down to 6-7 disputed cases for the following years;
- the ECB reported 10-20 confirmatory applications for the years 2016-2018.

Chart 21

CHANNELS THROUGH WHICH REQUESTS ARE RECEIVED (a)(b)



SOURCES: ESCB/SSM institutions (Annex 2).

a Institutions could provide multiple channels through which requests are submitted in their responses.

b Ten institutions either did not provide any information or stated that they do not keep any statistics on this issue.

In the case of the four institutions that reported the highest amount of requests for access to information received (i.e. above 1000), the number of disputed responses was either none in two of the institutions or around 1% in the other two.

In terms of the different channels through which requests are being submitted (see Chart 21):¹⁴¹

- 21 institutions noted requests arriving in an online form, with the Danish NCB, Italian NCB/NCA and Maltese institutions (both NCB and NCA) receiving requests only in this form.
- Furthermore, 13 institutions also noted receiving requests on paper, where the French NCA stated that all the requests were received on paper, with two of them being sent additionally via email.
- Lastly, four institutions reported receiving public requests for access to information by phone, namely: the Finnish NCB stated receiving only a few requests over the phone; the Greek NCB/NCA reported receiving approximately 100 requests over the phone; the Lithuanian NCB/NCA noted receiving roughly 50% of the requests via phone and the Romanian NCB/NCA informed that about 5% of the requests submitted by media are over the phone.

¹⁴¹ Please note that institutions could provide multiple channels through which requests are submitted in their responses. In addition, ten institutions either did not provide any information or stated that they do not keep any statistics on this issue.

6 Future initiatives

The questionnaire used for the purpose of this report included a final question asking about any planned future initiatives in the area of the right of access to information. The main future initiatives reported by the institutions can be summarised as follows:

- In Austria, the topic of transparency and right of access is included in the current government’s 2020-2024 plan.¹⁴² This plan assumes the abolition of official administrative secrecy by repealing the basis of this secrecy (Article 20(3)-20(4) of the Austrian Constitution) and the introduction of a new enforceable right to freedom of information. This right would be applicable to all governmental institutions, which would be obliged to actively publish information in the general interest (e.g. studies, expert opinions, contracts above a threshold to be defined) in an accessible way for everyone. A central transparency register would also be created. The right of access to information would not depend on the storage form and would include access to all previously created documents. The access right would be limited insofar and as long as confidentiality is necessary and proportionate in the following cases:
 - owing to the confidentiality of personal data in line with the GDPR,
 - owing to foreign and integration policy reasons,
 - in the interest of national security, national defence or the maintenance of public order and security,
 - in preparation for an official decision,
 - in the event the authority were to incur a significant economic or financial loss,
 - for the protection of commercial or industrial secrets, provided that such secrets are protected by national law or EU law,
 - owing to the confidentiality of the deliberations of authorities, provided that such confidentiality is provided by law,
 - to protect ongoing investigation, judicial and disciplinary proceedings.

The transmission of the information or documents would be without undue delay, and in any event within four weeks. In justified cases the time limit could be extended to a total of eight weeks. Additionally, it would be free of

¹⁴² For more information on the Austrian government’s 2020-2024 plan (Aus Verantwortung für Österreich. Regierungsprogramm 2020–2024), please consult: https://www.dieneuevolkspartei.at/Download/Regierungsprogramm_2020.pdf.

charge. The applicant would have legal protection analogous to that in the Environmental Information Act¹⁴³ with a decision deadline of two months after receipt of the request and a two-month deadline for a decision by the State Administrative Court. Lastly, the independent data protection authority would have an advisory status in relation to all institutions covered by the new right of access to information obligations.

- The Croatian NCB/NCA indicated the main initiatives from the Croatian Information Commissioner’s Strategic plan for 2020-2022¹⁴⁴, which are the following:
 - effective protection of the right of access to information and re-use of information;
 - education and promotion of the right of access to information and re-use of information;
 - monitoring and reporting on the exercise of the right of access to information and re-use of information;
 - compatibility of public sector’s web pages and software solutions with mobile devices (accessibility)
- The Estonian NCA, together with the Estonian NCB, will continue with information days for consumers. Additionally, it will keep its public website up to date with all the relevant information and improve the user experience, as well as continuing to cooperate with e-government.
- The Italian NCB/NCA stated that, in its Corruption Prevention Plan for the period 2019–2021, it has planned to issue internal guidelines in order to support the assessment of the requests for access to information. This concerns especially the requests for access to documents, given that they are handled in a decentralised fashion (the competent business area is that holding the documents on account of the subject matter). Those guidelines are going to be adopted in 2020. Besides that, the Italian NCB/NCA is preparing a dedicated section of its website to publish the documents that have been the subject of requests for public access a number of times.
- The Latvian NCB noted that the prospected incorporation of the Latvian NCA into Latvian NCB might also mean a review of the legal issues regarding information exchange and access to information.

143 For more information on the Austrian Environmental Information Act (Umweltinformationsgesetz), please consult: <http://www.umweltinformationsrecht.de/media/content/files/UIIG.pdf>.

144 For more information on the Croatian Information Commissioner’s Strategic plan for 2020-2022, please consult: <https://www.pristupinfo.hr/wp-content/uploads/2019/04/Strateski-plan-povjerenika-za-informiranje-2020-2022.pdf>

- The Dutch NCB pointed out that currently there is a new bill on public access to government information pending in the Dutch Parliament.¹⁴⁵ The bill has been under discussion for several years, as its initial version was submitted to the Dutch Parliament in 2012. The law, in its current draft version, also covers the Dutch NCB in its scope. The Dutch Minister for the Interior and Kingdom Relations requested from the ECB an opinion on this draft law. The ECB, in its opinion CON/2019/31¹⁴⁶, welcomed the draft law and considered that it would enhance the legitimacy and accountability of, among others, the Dutch NCB by providing for access to certain information. Nevertheless, the ECB also highlighted some shortcomings concerning the need for clarification that any obligation to provide information under this draft law is without prejudice to professional secrecy obligations under the Statute of the ESCB and of the ECB and the public access regime of the ECB. Additionally, the ECB suggested that the draft law should contain a transitional clause to avoid a retroactive effect, in which the Dutch NCB could be asked to provide information that it has received long before the draft law enters into force. In response, a limited transitional clause has been included in the latest text proposal. The draft law is still under discussion in the Parliament and it is not clear what kind of change might still be introduced.
- The Portuguese NCB/NCA stated that currently a proposal for improving the quality and internal coordination of procedures relating to access of information is being prepared by its General-Secretariat.
- The Slovak NCB/NCA noted that an amendment to the Freedom of Information Act is being prepared under authority of the Ministry of Justice of the Slovak Republic.
- The ECB pointed out that Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents needs an update following the Treaty of Lisbon, where public access is considered a fundamental right. Nevertheless, currently there is no information available as to any plans to launch the work on this update.

The rest of the institutions stated that they are not aware of any initiatives in the area of right of access to information in their respective countries, or did not state any initiative. The Maltese NCA stressed that it considers that the system is transparent as it is at the moment; therefore, it will not allocate any further investment at this point in time.

¹⁴⁵ For more information on the new bill on public access to government information pending in the Dutch Parliament (draft law on open government/Wetsvoorstel open overheid), please consult: <https://www.digitaleoverheid.nl/overzicht-van-alle-onderwerpen/democratie/democratie-in-actie/wet-open-overheid/>.

¹⁴⁶ For more information on the ECB opinion CON/2019/31, please consult: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019AB0031&from=EN>.

7 Conclusions

This report is the outcome of the Schuman Programme project undertaken by the Banco de España to learn more about the ways in which the ESCB/SSM institutions grant access to information in the context of their activities.

Access to information is one of the most important building blocks of transparency. Providing correct and timely information increases citizens' trust in the institutions. After the financial crisis of 2007-2008, transparency became increasingly important for some of the central banks and competent authorities. It might become even more important in the wake of the coronavirus pandemic in view of the weighty measures taken by central banks.

This report can, therefore, help gather and share best practices among countries, as a means of strengthening the right of access and making it a better tool for communication with European citizens.

As seen in Chapter 2 of this report, each country regulates this right either in its constitution or in state-level legislation and, for the whole EU, the right of access to information of the EU institutions is also recognised in the Charter of Fundamental Rights of the EU and in the Treaty of Lisbon. These regulations show the importance of the right of access to information in the European context. The analysis of the specific regimes applicable to NCBs/NCAs brought to light the importance of the exclusion of their statutory tasks from the scope of FOI regulations. Additionally, various NCBs/NCAs shared information on the applicable court rulings that provided for a deeper understanding of the limits to exemption of supervisory information from the right of access. Lastly, Chapter 2 of the report shed light on the national authorities specifically tasked with oversight of the right of access, pointing out the differences in powers that they have.

Chapter 3 of this report focused on the analysis of the specific national FOI regulations. It showed that even though mostly everyone is granted with the right to access information (regulations do not usually distinguish between their own citizens and foreigners or private persons and legal entities), there are many exclusions and exemptions, as well as other inadmissibility reasons that may limit this right. The responses provided by the NCBs/NCAs evidenced that secrecy and confidentiality of information is the most important exclusion on which these institutions base their non-disclosure decisions.

Further, in terms of the main procedural rules, the study revealed differences in terms of the need for the identification of the applicant, with some of the NCBs/NCAs requiring a copy of an ID and with others providing responses to anonymous requests. The means for submitting a request for access to information also varied, ranging from NCBs/NCAs that require written form to those who accept requests submitted in every possible way.

Additionally, the time limits for providing responses to requests for access to information varied from just a couple of days to 3 months. Important differences were also noted in the sections concerning available remedies, where almost one-third on the NCBs/NCAs noted that there are no internal appeal options. In terms of external review options, the different powers of the national authorities overseeing the right of access were noted, where some of them have only advisory status while others act as appeal bodies.

Chapter 4 of this report tackled the study of the internal approach to answering requests for access to information by the NCBs/NCAs. In particular, differences were noted in internal organisation, with fewer than half the NCBs/NCAs having a single point of contact for requests for access and only 40% not having a dedicated unit to handle those requests. Furthermore, three institutions reported not having any general record of requests for access. In terms of publication, 20% of the institutions reported publishing the requested information and 82% confirmed active publicity requirements applicable to NCBs/NCAs. Adding to that, almost 50% of the institutions taking part in the survey reported publishing information about the remuneration of at least members of governing bodies and, partially, also of other high-level officials. Some NCBs/NCAs noted various international reports/recommendations on the topic of FOI, along with inspirational e-government initiatives.

The statistics provided by the NCBs/NCAs are examined in detail in Chapter 5 of this report. The FOI requests covered topics of banking supervision issues, central bank issues, statistical information, HR issues, procurement and concluded contracts, and administrative and operating expenses. The types of applicants included citizens and foreign nationals, journalists, legal entities, lawyers, public institutions, stakeholders of financial institutions, interest groups, academics and staff of the NCBs/NCAs. The number of requests received varied immensely from NCBs/NCAs reporting not having received any such requests to those who received more than 1000 a year. Lastly, a drive towards digitalisation was observed with the majority of the institutions reporting that the requests for access they received were submitted online.

Having a uniform treatment of access to information in the ESCB and the SSM, where NCBs/NCAs and the ECB work closely together and share the same information, is probably one of the main current and future challenges in the field of access to information. There are multiple and varied possibilities for their configuration: from the application of the same EU professional secrecy obligations within the ESCB and the SSM (which would prevail over national laws) to the exclusion of some common tasks (such as ESCB tasks) altogether from the application of national regimes.

It takes time to develop such a uniform treatment because of the necessary understanding, consensus-building and implementation guidelines, especially on a matter where there are different national freedom of information regimes, and even regional differences and sensitivities. Meanwhile, each of the NCBs/NCAs have created –as we have seen in this report– their own personalised way of implementing the right of access to

information. Learning from other NCBs/NCAs and sharing their own experience with chosen implementation methods will surely help to improve the treatment of this matter across all ESCB institutions and SSM competent authorities and beyond.

Finally, the Banco de España would like to warmly thank all the participating institutions for their cooperation, support and practical and useful feedback provided on a prior draft of this document, without which the drafting of this report would not have been possible.

Annex 1 Questionnaire

Right of access		
1	Is the right of access to information a constitutional right in your country? <i>If so, when was this right introduced into the Constitution?</i>	<input type="checkbox"/> Yes, introduced in (year) <input type="checkbox"/> No
2	Is there any national legislation (general and specific) regulating the right of access to information? <i>Please detail the legislation in the comments section and, if possible, provide us with a copy/link of the legislation</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No Comments:
3	Is there a specific regime applicable to central banks / competent authorities in your country that protects the independence of the national central bank / competent authority and the confidentiality of certain matters specific to the performance of the national central bank's (or competent authority's) tasks? <i>If so, please provide a short description of the specificities in the comments section</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No Comments:
4	Do you have examples of judicial rulings concerning the right of access to information affecting central banks or competent authorities? <i>If possible, please provide us with an extract and reference of the ruling in the comments section</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No Comments:
5	Is there a designated transparency authority in your country overseeing the right of access? <i>If so, please describe the functions of this authority in general and with respect to the national central bank or competent authority in the comments section</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No Comments:
6	Does the transparency authority in your country have sanctioning powers?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7	Are there any other specific characteristics of the right to access of information in your country? <i>If so, please add a short description in the comments section</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Structure of the right of access to information from central banks or competent authorities		
8	What is the scope of the right of access to information?	
9	Who has the right of access?	
10	Is it a full access right or is it qualified in any way (e.g. restricted only to citizens or natural persons; need to have special interest to access information; possibility to only access your own personal information)? <i>Please describe the main qualifications in the comments section</i>	<input type="checkbox"/> Yes, it is a full access right <input type="checkbox"/> No, the access right is qualified Comments:
11	What are the conditions / limits to granting right of access to information?	
12	Are there any time limitations to applying those exceptions? Are the documents or information released after that period?	<input type="checkbox"/> Yes, the time limitation is and the documents are automatically released after this time <input type="checkbox"/> Yes, the time limitation is and the documents are NOT automatically released after this time <input type="checkbox"/> No, there are no time limitations

13	What exceptions do you mostly rely on for non-disclosure of information?	
14	Is there any special treatment foreseen for supervisory information? <i>If so, please describe it in the comments section</i>	<input type="checkbox"/> Yes
		<input type="checkbox"/> No
		Comments:
15	Please describe the main procedural rules for executing the right of access to information	
16	Do applicants have to identify themselves? <i>If so, please describe in what way in the comments section</i>	<input type="checkbox"/> Yes
		<input type="checkbox"/> No
		Comments:
16	Do applicants have to identify themselves? <i>If so, please describe in what way in the comments section</i>	<input type="checkbox"/> Yes
		<input type="checkbox"/> No
		Comments:
17	Do applicants need to identify the department from which the information is requested?	<input type="checkbox"/> Yes
		<input type="checkbox"/> No
		Comments:
18	Do applicants need to identify the legal basis for their request?	<input type="checkbox"/> Yes
		<input type="checkbox"/> No
		Comments:
19	In what way can applicants file the requests (e.g. can they do it orally or in writing, online, over the phone, in person, through a third party...)?	
20	What documents do applicants have to provide (e.g. ID, specific application forms...)? <i>If it is mandatory or recommended to use a specific application form, please provide a link to this form</i>	
21	Is there any deadline within which the central bank / competent authority has to respond?	<input type="checkbox"/> Yes, it is ...days
		<input type="checkbox"/> No
		Comments:
22	Is there any specific form / medium in which the central bank / competent authority has to respond (e.g. e-mail, paper, etc.)?	
23	Is the central bank / competent authority obliged to disclose only existing documents or also prepare a dedicated compilation of information to fulfil a request?	
24	Is the central bank / competent authority obliged to reason a non-disclosure decision? Can it issue a “neither confirm nor deny” decision?	
25	Does the central bank (or competent authority) have to consult third parties if the information requested concerns those third parties?	
26	What is the internal appeal possibility against the decision on non-disclosure?	
27	What are the external review options / legal remedies available to applicants? Can they appeal the decision on non-disclosure to another authority?	
Policy recommendations and best practices		
28	Describe additional rules / internal policies on right of access instituted in your central bank / competent authority?	
29	How did they change after the financial crisis?	

30	Do you have a dedicated single contact point (online form, phone number etc.) for access requests?	<input type="checkbox"/> Yes, it is ... <input type="checkbox"/> No Comments:
31	Is there a specific unit dedicated to handling access right requests in your central bank / competent authority?	<input type="checkbox"/> Yes, it is ... <input type="checkbox"/> No
32	How many people are working with the requests for access to information?	
33	Does this unit also take care of data protection issues?	<input type="checkbox"/> Yes <input type="checkbox"/> No
34	How do you keep a record of all the access requests?	
35	Do you publish the information requested on an online portal?	<input type="checkbox"/> Yes, on this portal: <input type="checkbox"/> No
36	Do you have a common transparency portal for all public institutions in your country?	<input type="checkbox"/> Yes, this portal: <input type="checkbox"/> No
37	Is there a requirement for active publicity by your central bank / competent authority?	<input type="checkbox"/> Yes <input type="checkbox"/> No
38	What kind of information needs to be actively published?	
39	Is there a requirement to keep the information updated?	<input type="checkbox"/> Yes <input type="checkbox"/> No
40	Do you publish information on the remuneration of high-level officials and / or the members of governing bodies and / or other staff?	<input type="checkbox"/> Yes, on this portal: ... <input type="checkbox"/> No
41	Do you publish any information on the cost of meetings, seminars, travels and other institutional events where high-level officials and / or the members of governing bodies take part?	<input type="checkbox"/> Yes, on this portal: <input type="checkbox"/> No
42	Describe any training / information initiatives? (e.g. do you provide any online training, info sessions etc. for the public on their right to access information?)	
43	Are there any reports / recommendations from international organisations / interest groups etc. that assess the implementation of the right of access to information in your country? <i>If so, please provide a short description in the comments section</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No Comments:
44	Are there any e-government initiatives in your country in which your central bank / competent authority is participating? <i>If so, please provide a short description in the comments section</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No Comments:
Statistics for the period 2016-2019		
45	What were the categories of topics in which you received access to information requests?	
46	What categories of applicants requested access to information from your institution? Was there any difference in treatment of each of those categories concerning access to information (e.g. journalists, shareholders, public authorities...)?	
47	How many requests for access to information have you received in the last 4 years? <i>Please provide numbers for each year separately and, if possible, with the breakdown into categories of topics and categories of applicants</i>	

48	How many of those requests were accepted and how many rejected? <i>Please provide numbers for each year separately</i>	
49	How many of the non-disclosure decisions were disputed and with what outcome? <i>Please provide numbers for each year separately</i>	
50	How many requests did you receive online and how many on paper or over the phone? <i>Please provide numbers for each year separately</i>	
Future initiatives		
51	Please name any planned future initiative in the area of right of access to information concerning central banks or competent authorities in your country.	

Annex 2 List of national institutions taking part in the study

Table A2.1

Country	Institution	Reference in this report
Austria	Oesterreichische Nationalbank	Austrian NCB
Austria	Finanzmarktaufsicht (FMA)	Austrian NCA
Belgium	National Bank of Belgium	Belgian NCB/NCA
Bulgaria	Българска народна банка (Bulgarian National Bank)	Bulgarian NCB/NCA
Croatia	Hrvatska narodna banka	Croatian NCB/NCA
Cyprus	Κεντρική Τραπεζα της Κύπρου (Central Bank of Cyprus)	Cypriot NCB/NCA
Czech Republic	Czech National Bank	Czech NCB/NCA
Denmark	Danmarks Nationalbank	Danish NCB/NCA
Estonia	Eesti Pank	Estonian NCB
Estonia	Finantsinspeksioon	Estonian NCA
Finland	Suomen Pankki	Finnish NCB
Finland	Finanssivalvonta	Finnish NCA
France	Banque de France	French NCB
France	Autorité de contrôle prudentiel et de résolution (ACPR)	French NCA
Germany	Bundesanstalt für Finanzdienstleistungsaufsicht (Bafin)	German NCA
Germany	Deutsche Bundesbank	German NCB
Greece	Τράπεζα της Ελλάδος (Bank of Greece)	Greek NCB/NCA
Hungary	Magyar Nemzeti Bank	Hungarian NCB/NCA
Ireland	Central Bank of Ireland	Irish NCB/NCA
Italy	Banca d'Italia	Italian NCB/NCA
Latvia	Latvijas Banka	Latvian NCB
Latvia	Financial and Capital Market Commission (FCMC)	Latvian NCA
Lithuania	Lietuvos bankas	Lithuanian NCB/NCA
Luxembourg	Banque centrale du Luxembourg	Luxembourg NCB
Luxembourg	Commission de Surveillance du Secteur Financier (CSSF)	Luxembourg NCA
Malta	Central Bank of Malta	Maltese NCB
Malta	Malta Financial Services Authority	Maltese NCA
Netherlands	De Nederlandsche Bank N.V.	Dutch NCB/NCA
Poland	Narodowy Bank Polski	Polish NCB
Portugal	Banco de Portugal	Portuguese NCB/NCA
Romania	National Bank of Romania	Romanian NCB/NCA
Slovakia	Národná banka Slovenska	Slovak NCB/NCA
Slovenia	Banka Slovenije	Slovenian NCB/NCA
Spain	Banco de España	Spanish NCB/NCA
Sweden	Sveriges Riksbank	Swedish NCB
United Kingdom	Bank of England	BoE
EU	European Central Bank (ECB)	ECB

SOURCE: Own elaboration.

Annex 3 List of national right of access legislation provided by the institutions

Table A3.1

Country	Legislation governing right of access
Austria	<ul style="list-style-type: none"> – Duty to Grant Information Act (in German - Auskunftspflichtgesetz, APG) https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000916 – Information Reuse Act for the public sector (in German - Informationsweiterverwendungsgesetz, IWG) https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004375
Belgium	<ul style="list-style-type: none"> – Act of 11 April 1994 relating to access to government information https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1994041151&table_name=loi
Bulgaria	<ul style="list-style-type: none"> – Law on Access to Public Information https://lex.bg/laws/ldoc/2134929408
Croatia	<ul style="list-style-type: none"> – Act on the Right of Access to Information (OG 25/2013 and 85/2015) https://www.pristupinfo.hr/pravni-okvir/?lang=en
Cyprus	<ul style="list-style-type: none"> – Law on Public Access to Information of the Public Sector Law of 2017 (184 (I)/2017), which will come into force on 22 December 2020 http://www.cylaw.org/nomoi/enop/non-ind/2017_1_184/full.html
Czech Republic	<ul style="list-style-type: none"> – Act On Free Access to Information 1999 https://www.mvcr.cz/soubor/free320-1999-pdf.aspx (not up to date)
Denmark	<ul style="list-style-type: none"> – Access to Public Administration Files Act https://www.retsinformation.dk/Forms/R0710.aspx?id=152299
Estonia	<ul style="list-style-type: none"> – Public Information Act https://www.rigiteataja.ee/en/eli/529032019012/consolide – Response to Memoranda and Requests for Explanations and Submission of Collective Proposals Act https://www.rigiteataja.ee/en/eli/501112016001/consolide
Finland	<ul style="list-style-type: none"> – Act on the Openness of Government Activities http://finlex.fi/fi/laki/kaannokset/1999/en19990621_20150907.pdf (unofficial translation)
France	<ul style="list-style-type: none"> – Legislation no. 78-753 of 17 July 1978 on Free Access to Administrative Documents, now codified in Book III of the <i>Code des relations entre le public et l'administration</i> https://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000031367685&cidTexte=LEGITEXT000031366350
Germany	<ul style="list-style-type: none"> – Freedom of Information Act http://www.gesetze-im-internet.de/englisch_ifg/index.html
Greece	<ul style="list-style-type: none"> – Article 5 (access to documents) of Greek Code of Administrative Procedure (Law 2690/1999) http://minadmin.ypes.gr/?p=27401 (in Greek) http://europam.eu/data/mechanisms/FOI/FOI%20Laws/Greece/Greece_Admin%20Procedure%20Code%202690_1999.pdf (in English) – Presidential Decree 28/2015 Codification of provisions regarding access to public documents and data https://www.e-nomothesia.gr/kat-demosia-dioikese/pd-28-2015.html (codified in Greek)
Hungary	<ul style="list-style-type: none"> – Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information https://www.naih.hu/act-cxii-of-2011---privacy-act--.html
Ireland	<ul style="list-style-type: none"> – Freedom of Information Act 2014 http://www.irishstatutebook.ie/eli/2014/act/30/enacted/en/html?q=Freedom+of+Information
Italy	<ul style="list-style-type: none"> – Law on the administrative proceeding (Law no. 241 of 1990, Articles from 22 to 27) provides for the right of access to the administrative documents, upon the condition that the applicant has a qualified interest to the disclosure – The procedural rules governing the access to documents held by Bank of Italy are envisaged in two Decisions adopted by Bank of Italy in conformity with the principles laid down in the primary legislation: <ul style="list-style-type: none"> ü Decision of 11 December 2007 regards the access to documents in the field of banking supervision: https://www.bancaditalia.it/chi-siamo/procedimenti-amministrativi/provv_11_12_2007.pdf ü Decision of 29 October 2007 regards the access to documents on matters other than banking supervision: https://www.bancaditalia.it/chi-siamo/procedimenti-amministrativi/Provv_16_5_94_disciplina.pdf – Further, the Decision of the Governor of 16 May 1994 enumerates the specific exceptions where access can be denied: https://www.bancaditalia.it/chi-siamo/procedimenti-amministrativi/Provv_16_5_94.pdf – Recently, by means of Legislative decree no. 33 of 2013 (Law on transparency), the legislator has introduced the “<i>accesso civico</i>”, a form of public access where a demonstration by the applicant of a personal, qualified interest is not required. The Bank of Italy has implemented the Law on transparency by means of the Regulation of 25 March 2014 https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2014-04-10&atto.codiceRedazionale=14A02882

SOURCE: ESCB/SSM institutions.

Table A3.1 (cont.)

Country	Legislation governing right of access
Latvia	<ul style="list-style-type: none"> – Freedom of Information Law (in Latvian - <i>Informācijas atklātības likums</i>). This law regulates the access right of private persons (individuals and companies): https://likumi.lv/ta/en/en/id/50601-freedom-of-information-law – Law on the Press and Other Mass Media. This law regulates requests by the press: https://likumi.lv/ta/en/en/id/64879-on-the-press-and-other-mass-media
Lithuania	<ul style="list-style-type: none"> – General: Law on the Provision of Information to the Public (No. I-1418, 2 July 1996) https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.29884/asr – Specific for state institutions: Law on the Right to Obtain Information from State and Municipal Institutions and Agencies (No VIII-1524, 11 January 2000). https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.94745/asr
Luxembourg	<ul style="list-style-type: none"> – Law of 14 September 2018 on a transparent and open administration as modified (in French - <i>Loi modifiée du 14 septembre 2018 relative à une administration transparente et ouverte</i>): http://legilux.public.lu/eli/etat/leg/loi/2018/09/14/a883/jo – Regulation of 8 June 1979 on the non-contentious administrative procedure (in French - <i>Règlement grand-ducal du 8 juin 1979 relatif à la procédure à suivre par les administrations relevant de l'Etat et des communes</i>): http://legilux.public.lu/eli/etat/leg/rgd/1979/06/08/n7/jo
Malta	<ul style="list-style-type: none"> – Freedom of Information Act (Chapter 496 of the Laws of Malta) – Freedom of Access to Information on the Environment Regulations (Subsidiary Legislation 549.39): – Fees charged by Public Authorities for access to documents regulation (Subsidiary Legislation 496.01) The above-mentioned laws may be retrieved by entering the Chapter number via the search function on this website: https://legislation.mt/ – Freedom of Information Code of Practice: https://www.centralbankmalta.org/freedom-of-information Please note that the latter is solely a code of practice intended to provide guidance to public authorities
Netherlands	<ul style="list-style-type: none"> – Act on public access to government information (in Dutch - <i>Wet openbaarheid van bestuur</i>) https://wetten.overheid.nl/BWBR0005252/2018-07-28 – Decree pertaining to administrative bodies exempt from the Act on public access to government information (in Dutch: <i>Besluit bestuursorganen WNO en Wob</i>) https://wetten.overheid.nl/BWBR0009896/2007-12-29
Poland	<ul style="list-style-type: none"> – Act of 6 September 2001 on access to public information (Journal of Law from 2019, item 1429 as amended): http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20190001429
Portugal	<ul style="list-style-type: none"> – Articles 82 and 85 of Decree-Law No. 4/2015, of 7 January (Code of Administrative Procedure) - Access to information referring to an ongoing administrative procedure. https://dre.pt/application/conteudo/66041468 – Law No. 26/2016, of 22 August, as amended by Law No. 58/2019, of 8 August (Legal framework for the access to administrative and environmental information and for the reuse of administrative documents) – Access to administrative archives and records. https://dre.pt/application/conteudo/75177807 https://dre.pt/application/file/a/123813850
Romania	<ul style="list-style-type: none"> – Law No. 544/2001 on Free Access to Information of Public Interest http://www.bnro.ro/apage.aspx?pid=404&actId=324036 – Government Emergency Ordinance No. 27/2002 on the regulation of the activity of solving the petitions http://www.bnro.ro/apage.aspx?pid=404&actId=324034
Slovakia	<ul style="list-style-type: none"> – Act No. 211/2000 Coll. on Free Access to Information and on Amendments of Some Acts, as amended (The Freedom of Information Act) https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2000/211/(Slovak version)
Slovenia	<ul style="list-style-type: none"> – Public Information Access Act http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3336
Spain	<ul style="list-style-type: none"> – Law 19/2013 of 9 December 2013 on Transparency, Access to Public Information, and Good Governance https://transparencia.gob.es/transparencia/dam/jcr:2fcd5d26-cf51-4775-8d44-6683586f1ee9/ley-de-transparencia-ingles.pdf (not up to date)
Sweden	<ul style="list-style-type: none"> – Public Access to Information and Secrecy Act https://www.government.se/information-material/2009/09/public-access-to-information-and-secrecy-act/
United Kingdom	<ul style="list-style-type: none"> – Freedom of Information Act 2000 (FOIA) http://www.legislation.gov.uk/ukpga/2000/36/contents – Environmental Information Regulations 2004 (EIR) http://www.legislation.gov.uk/uksi/2004/3391/contents/made – The EIR is derived from Council Directive 2003/4/EC http://www.legislation.gov.uk/eudr/2003/4/adopted
EU	<ul style="list-style-type: none"> – Decision ECB/2004/3 on public access to ECB documents https://www.ecb.europa.eu/ecb/legal/pdf/cellar_bd68ac81-63eb-44c3-a109-d181b1f0c8ee_en_txt.pdf

SOURCE: ESCB/SSM institutions.

Annex 4 List of national authorities overseeing the right of access

Table A4.1

Country	Authority overseeing the right of access
Belgium	Commission for Access to Administrative Documents (CADA) https://www.ibz.rmn.fgov.be/fr/commissions/publicite-de-ladministration/presentation-de-la-commission/
Croatia	Information Commissioner https://www.pristupinfo.hr/?lang=en
Cyprus	Information Commissioner http://www.dataprotection.gov.cy/dataprotection/dataprotection.nsf/home_el/home_el?opendocument
Czech Republic	The Office for personal data protection https://www.uoou.cz/en/
Estonia	The Data Protection Inspectorate https://www.aki.ee/en
France	Commission for Access to Administrative Documents (CADA) https://www.cada.fr/
Germany	Federal Commissioner for Freedom of Information https://www.bfdi.bund.de/EN/Home/home_node.html
Greece	The National Transparency Authority https://aead.gr/
Hungary	Hungarian National Authority for Data Protection and Freedom of Information https://www.naih.hu/general-information.html
Ireland	The Office of the Information Commissioner https://www.oic.ie/
Italy	The Italian Anticorruption Authority https://www.anticorruzione.it/portal/public/classic/MenuServizio/ENG/Aboutus
Luxembourg	Commission for Access to Administrative Documents (CADA) https://cad.gouvernement.lu/en.html
Malta	The Office of the Information and Data Protection Commissioner (IDPC) www.idpc.org.mt
Portugal	Commission for the Access to Administrative Documents (CADA) http://www.cada.pt/
Slovenia	Information Commissioner https://www.ip-rs.si/en/
Spain	The Council of Transparency and Good Governance https://www.consejodetransparencia.es/ct_Home/en/index.html
United Kingdom	The Office of the Information Commissioner https://ico.org.uk/

SOURCE: ESCB/SSM institutions.