

Experience of J&E NGOs

with regard to the EU's
PILOT and Infringement Procedures

Country Reports

Justice and Environment 2013

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On J&E

Justice and Environment (J&E) is a European Network of Environmental Law Organizations.

J&E works in Europe and consists of NGOs from twelve different countries dealing with environmental law solely or as one of their activities. J&E aims for a better legislation and implementation of environmental law on the national and European Union (EU) level to protect the environment, people and nature. J&E does this by enhancing the enforcement of EU legislation through the use of European law and exchange of information on the national, cross-border and wider European level. All J&E activities are based on the expertise, knowledge and experience of its member organizations. The members contribute with their legal know-how to and are instrumental in the initiation, design and implementation of the J&E work program.

Introduction

In the 2013 Work Plan of J&E, we laid considerable emphasis on discovering the transparency and inclusiveness or the lack thereof that characterizes the EU procedures for achieving Member State compliance with the *acquis* (EU PILOT procedures and infringement procedures). After having evaluated the functioning of the foregoing legal instruments and after having familiarized ourselves with the EU's self-evaluation in this regard (http://ec.europa.eu/eu_law/docs/docs_infringements/eu_pilot_en.pdf), we have run a so-called reality check among the member NGOs of J&E.

We have created a questionnaire that would uncover the NGOs' own experience with the EU Pilot and whether the latter is in line with the own evaluation of the Commission in this matter. The following NGOs have provided an answer to the questionnaire:

- EMLA, Hungary
- EPS, Czech Republic
- IIDMA, Spain
- Ökobüro, Austria
- WWF Austria, Austria

The following is an aggregated summary of the answers given by the respondents, according to the numbering of the questions:

1. *Have you ever submitted a complaint to the Commission in order to trigger an infringement procedure?*

All organizations have either submitted complaints to the Commission or assisted other environmental NGOs in their respective countries (Hungary, Spain) to submit such complaints.

2. *If yes, how many?*

The answers show that the number of complaints submitted (or assisted) group around 4, with the minimum of 3 and a maximum of 6, usually in a 3 to 5 year period. The average is sharply 4 complaints per organization responding.

3. *What were the topics of your complaints?*

The topics of the complaints are the implementation of the following pieces of union environmental legislation: the EIA directive, the SEA directive, the Natura 2000 directives, the IPPC directive, and the Water Framework Directive. Further topics were environmental information, access to environmental justice, the Emission Trading System, waste management.

4. *How long did you wait between submitting your complaint and receiving a decision from the Commission?*

In the cases the time necessary for the Commission to answer the complaint varied between 2 months and 4 years (Czech Republic), 1 year (Austria), 3 months and 2,5 years (Hungary), and ¾ year to 4 years (Spain). In an average, the duration while the Commission decided (either positively or negatively) was 2 years.

5. *Was the EU PILOT mechanism applied in your case?*

It varies to what extent the PILOT mechanism was applied, e.g. none (Czech Republic), few occasions (Austria), one out of four (Spain) and all cases (Hungary).

6. How frequently did you receive written information about the progress of your complaint?

The frequency of Commission-complainant communication again varied, ranging from 1 communication after 4 years and 1 communication after 2,5 years (Czech Republic), good and continuous communication in one case but in the other, no information in the last 8 months (Austria), or some communication every 3 months (Hungary).

7. How much (insufficient or sufficient) information did you receive in these communications?

Despite the many varying factors mentioned above, it seems that there is one uniform thing: the communication provided by the Commission was in almost all cases insufficient, limited only to informing about the standpoint of the Commission (without reasoning) or the procedural steps taken (without sending any supportive documentation).

8. What was the result of your complaint?

In all the procedures mentioned (i.e. altogether 20 cases) there were 15 complaints dismissed (no infringement case started), 4 are still pending and there was only 1 case (Hungary) where the Commission started the infringement procedure and submitted a letter of formal notice to the Member State.

9. Were you satisfied by the decision of the Commission regarding your complaint?

Again a unifying factor among the respondents that they were generally discontent with the approach of the Commission, with only a very few exceptions (in the case of Hungary where the complaint eventually led to an infringement procedure). In the rest of the cases the communication and the decision-making of the Commission was unsatisfactory.

10. Did the Commission provide you with a complete explanation of their decision regarding your complaint?

The applicants always received some kind of explanation to the decisions of the Commission. In the majority of the cases the decisions were negative, and the reasoning was almost always procedural, or briefly citing the answer that was sent by the Member State to the Commission.

11. Did this explanation make use of infringement precedence in justifying the Commission's decision?

There was generally no reference to ECJ (CJEU) case law in infringement cases in the reasoning to the refusing decisions (except for some cases in relation to Hungary).

12. Did the Commission provide you with a copy of the Member State's response to your complaint?

With the exception of one single case out of 20, the Commission never in any form communicated the Member State's answer to the applicants (and even in that one case, the MS document was not formally released but only its content communicated).

13. Has the Member State's behavior/policies/enforcement and implementation of EU law regarding the topic of your complaint improved/changed since you submitted your complaint?

The respondents of the questionnaire have experienced the following: no or only minor, indirect impact (Czech Republic), but largely no change (Austria, Hungary, Spain).

14. Do you believe that the Commission's decision regarding your complaint is consistent with EU laws and requirements regarding access to justice and information? If not, why (please give a brief reasoning.)

The respondents of the questionnaire believe that the Commission's decisions were depriving the complainants of their right to information and the fact that there is no review procedure against the decisions of the Commission (refusal to start an infringement) is also against the requirement to ensure opportunities to challenge act and omissions of public authorities including EU institutions and bodies.

15. Did you find PILOT to be an effective means of dealing with your complaint?

All in all, the respondents of this questionnaire find the PILOT mechanism not effective or not possible to judge, and they also expressed serious concerns about its timeliness and that it does not significantly enhance the management of non-implementation situations by Member States.

Conclusion

While the Commission report (http://ec.europa.eu/eu_law/docs/docs_infringements/eu_pilot_en.pdf) considers the PILOT mechanism a large success (measured by the number of cases closed), the environmental NGOs of selected EU countries see the situation quite differently. On the procedural level, they find the process non-responsive, rhapsodic in terms of time of decision-making and frequency of communication, and non-satisfactory in terms of access to information or access to justice (review procedures).

In terms of substance, the decisions of the Commission (1 positive response out of 14 cases from 4 countries, representing both EU-15 and EU-10 countries) also gives rise to large disappointment among the environmental civil society organizations. In addition, the differences between countries in the same issues (e.g. communication frequency and style, access to Member State information, relationship of the Commission to the complainant) suggest that a lot depends on either the approach of the specific Commission staff or on personal relationship of the complainant with the Commission staff managing the PILOT cases. None of the possible explanations are favorable.

In this situation, **J&E suggests strongly that the PILOT procedure be regulated**, either by a binding Union piece of legislation or by a non-binding Commission document, but at least its place, importance, success rate, sustainability and added value in the management of Member State non-compliances be fundamentally reconsidered.

The way this should be done is included in the Position Paper prepared by J&E ([link](#)).

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