

Model Transparency Legislation

with regard to the EU's
PILOT and Infringement Procedures

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

A constant aim of J&E is to make sure environmental decision-making processes are transparent and inclusive. The processes running before the EU institutions are no exception. For this reason, the attention of J&E in 2013 turned to the so-called EU PILOT procedures and adjacent infringement procedures.

We tried to collect **all those information that we would find useful and we would like to see as accessible during an EU PILOT procedure and an infringement procedure**. This set of demands will feed into a proposal of J&E aiming at the adoption of an EU level regulation on the transparency and inclusiveness of the EU infringement procedures.

EU Model Transparency Legislation

J&E has drafted a model legislation in order to facilitate real life legislation and support the more transparency and inclusiveness of the EU PILOT and infringement procedures. The Model Legislation is linked to the Database Wishlist also created by J&E on principles modalities of online accessibility of data in the foregoing procedures. The following is a draft model with open-ended formulations and room for improvements, amendments, additions and deletions.

Model Transparency Legislation

Whereas:

- (1) The Treaty on European Union enshrines the concept of openness, stating that the Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.
- (2) Openness enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system. Openness contributes to strengthening the principles of democracy and respect for fundamental rights as laid down in the EU Treaty and in the Charter of Fundamental Rights of the European Union.
- (3) The European Council has concluded that there is a need to introduce greater transparency into the work of European Institutions.
- (4) Public should be provided with sufficient information to see and understand the logic behind Commission decisions in PILOT and Infringement procedures

Article 1-Purpose

- (1) The purpose of this Regulation is to create a database of documents and information pertaining to the EU Infringement and PILOT procedures and to provide greater transparency to the EU Infringement and PILOT processes through the creation of an Infringement and PILOT database.
- (2) The database should include enough information so that the public can see and understand the logic behind Commission decisions in PILOT and Infringement cases.
- (3) By creating this database, the EU can increase the transparency of crucial EU enforcement procedures and, with the increased transparency, improve the legitimacy of the EU within EU citizens.

Article 2-Beneficiaries and Scope:

- (1) The Regulation applies to all cases and complaints passing through the EU Infringement procedure and the EU PILOT procedure.
- (2) Anyone has a right of access to documents relating to the EU Infringement procedures and the EU PILOT procedure, subject to the principles, conditions, and limits defined in the Regulation.
- (3) The Institutions may, subject to the same principles, conditions, and limits, grant access to documents to any natural or legal person not residing or not having its registered office in a Member State.
- (4) Documents should be made directly available in a digital database, following the conditions and requirements laid out in this regulation.
- (5) This Regulation shall be without prejudice to rights of public access to documents held by the institutions which might follow from instruments of international law or acts of the institution implementing them.

Article 3-Definitions

For the purpose of the Regulation, the definitions provided in the Aarhus Convention will apply.

Article 4-Creation of a Database

- (1) The EU Institutions shall create a database, open to the public and accessible through the internet, compiling all documents related to EU Infringement cases and EU PILOT complaints.
- (2) The following information and documents relating to PILOT should be included:
 - a. Documentation of the original complaint
 - b. Documentation of the Member State response
 - c. The Commission decision with a written explanation of the decision
- (3) The following information and documents relating to the Infringement procedure should be included:
 - a. Documentation of the original complaint
 - b. Documentation of the complaint's progress through the Infringement procedure
 - c. Documentation of each step in the complaint's progress, including Member State responses, evidentiary information, and Commission and EU responses, analyses, and decisions with written explanations.
- (4) The database shall include as up to date information as possible, including information about ongoing investigations and complaints. The public should be able to track a complaint through the entire Infringement and PILOT procedure.
- (5) Data shall be organized in an easy-to-sort fashion, allowing the public to search the database under a number of different search types. These search types might include:
 - a. Keyword searches, including „within test” searches.
 - b. Topic searches, including the ability of the public to access all cases and complaints that fall under a particular topic without running a keyword search.
 - c. Searches by date
 - d. Searches by Member State
 - e. Searches by document number, or case and complaint number.
 - f. The database should also feature an advanced search option that allows the public to search under all possible search options.

Article 5-Exceptions

- (1) In creating this database, the EU should take steps to protect the personal information of complainants and citizens according to the requirements of existing EU law
- (2) The following exceptions should be interpreted narrowly. If there is an overriding public interest in the publication of a document, the exceptions do not apply.
- (3) The Institutions may refuse to publish a document where publication would
 - a. seriously undermine the progress or fairness of an ongoing investigation
 - b. seriously undermine public security, defense and military matters, international relations, or the financial, monetary, or economic policy of the Community or a Member State
 - c. seriously undermine the protection of commercial interests of a natural or legal person, including intellectual property, court proceedings and legal advice, or the purpose of inspections, investigations, and audits.
- (4) Member States may request that documents originating within the Member State are not published, but the EU may only agree not to publish a document if the document falls under one of the above narrowly tailored exceptions.
- (5) If part of a document falls into one of the exceptions, the EU shall publish the remaining parts of the document that do not fall under the exception.
- (6) Exceptions only apply for as long as the situation creating the exception is necessary, and for no longer than 30 years, whichever comes first.

Article 6-Entry into Force

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of European Communities*. The required database shall be functional no later than 1 year after this Regulation's entry into force.

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