To the President and Members of the
GENERAL COURT OF THE EUROPEAN UNION

APPLICATION
FOR ANNULMENT
pursuant to Article 263 of the
Treaty on the Functioning of the European Union

on behalf of

Association Justice & Environment, z.s. ("Justice and Environment")

an association under Czech law, domiciled Údolní 33, 602 00, Brno, Czech Republic,

Applicant,

v.

COMMISSION OF THE EUROPEAN UNION

Rue de la loi 200, B-1049 Brussels, Belgium,

Defendant

Method of service: The Applicant hereby declares pursuant to Article 57(4) of the Rules of Procedure that it chooses as a method of service acceptance by means of e-curia, R252136, through its designated agent Mrs. Sandra Podskalská

General Court of the European Union

Rue du Fort Niedergrünewald

Luxembourg

L-2925

The Honorable Court,

Association Justice & Environment, z.s. (hereafter: Applicant)

- according to **Article 263** of the Treaty on the Functioning of the European Union (hereafter TFEU)

- according to **Article 15** of the TFEU (ex Article 255 TEC)

- pursuant to **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

- pursuant to **Regulation (EC) No. 1367/2006** of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies

- according to the **Rules of Procedure of the General Court** (L 105, 23 April 2015)

hereby submits the following

APPLICATION FOR ANNULLMENT

against the European Commission (hereafter Defendant) as follows.

I. APPLICANT AND REPRESENTATION

1. The Applicant (Justice & Environment) is the European Network of 12 Environmental Law Organizations located in several EU countries (Czech Republic, Hungary, Austria, Slovakia, Spain, Romania, Estonia, Croatia and Slovenia). The Applicant aims for a stronger environmental legislation and implementation on both the national and European Union stages to protect the environment, people and nature. Climate and pollution control are the topics that are part of its long-term mission.

2. In accordance with Article 78 (3) of the Rules of Procedure of the General Court the required proof of existence in law for the Applicant as a legal person under Czech law is included (annex 1) as well as a copy of the statutes of the Applicant (annex 2).

3. In accordance with Article 51 (1) of the Rules of Procedure of the General Court the attorney representing the Applicant is Mrs. Sandra Podskalská, licensed attorney at law (annex 3), having her office in Brno, Czech Republic. The authorization for the representation of the Applicant in this proceeding is attached (annex 4).

4. For the purpose of this proceeding, in accordance with Article 57 of the Rules of Procedure of the General Court, the Applicant agrees to accept service through its designated agent Mrs. Sandra Podskalská by means of e-curia service to R252136.

II. TYPE OF ACTION

5. The Applicant requests pursuant to Article 264 TFEU the General Court to declare the following acts null and void:

   A. **Decision of the European Commission, Directorate General for Environment dated 19 August 2015, reference number Ref GestDem No 2015/4284.** By this decision a request of the Applicant for access to documents held by the Defendant has been refused.

   B. **Decision of the Secretary General on behalf of the European Commission dated 15 October 2015, reference number Ares(2015)4311297**. By this decision a confirmatory application has been declined.

III. RELEVANT FACTS AND LEGAL BACKGROUND

6. Directive of the European Parliament and Council of 21 May 2008, on ambient air quality and cleaner air for Europe, No 2008/50/EC, which should have been transposed into national legislations of all Member States by 11 June 2010, demanded to develop air quality plans for zones and agglomerations within which concentrations of pollutants in ambient air exceed the relevant air quality target values or limit values, plus any temporary margins of tolerance, where applicable.

7. In the Czech Republic, these plans have not been developed yet though the air pollution is a serious problem in the Czech Republic. The official Report on the Environment of the Czech Republic states that in 2014 the limit value for twenty-four hour average concentration of PM10 (dust) has been exceeded on 8,1 % of the territory of Czech Republic, affecting 24,4 % of the population. This means that around 2,6 million people has been exposed to excessive concentrations of dust.[1] Similarly, according to the Czech Hydro-meteorological Institute´s 2014 annual report, the limit value for twenty-four hour average concentration of PM10 has been exceeded more times than allowed by the legislation on almost half of the monitoring centers situated across the whole Czech Republic.[2]

8. The Commission has opened the procedure, according to Article 258 of the TFEU, concerning the possible infringement of the Czech Republic to fulfil the obligations under the Directive of the European Parliament and Council of 21 May 2008, No 2008/50/EC, on ambient air quality and cleaner air for Europe, by a letter of formal notice of 10 July 2010. The reasoned opinion was issued by the Commission on 26 March 2015. According to the information publicly released by the Commission: *"The European Commission is asking the Czech Republic to comply with EU legislation requiring Member States to limit citizens' exposure to fine dust particles (PM10) by defining specific limit values to be observed. These tiny particles originate in emissions from industry, traffic and domestic heating, and they can cause asthma, cardiovascular problems, lung cancer and premature death. The latest figures from the Czech Republic show that the maximum daily limits for these particles is being exceeded in Praha, Střední Čechy, Severozápad, Severovýchod (except for 2008), Brno, Střední Morava, Moravskoslezsko and Ostrava/Karviná/Frýdek-Místek, with yearly limits also being exceeded in Moravskoslezsko and*

[1] Report on the Environment of the Czech Republic 2014, Ministry of Environment, available online: http://www.mzp.cz/C1257458002F0DC7/cz/news_151120_Zprava_o_ZP_2014/$FILE/ZpravaoZP2014.pdf
[2] http://www.chmi.cz/files/portal/docs/uoco/mes_zpravy/Rocni_zprava_2014.pdf

Ostrava/Karviná/Frýdek-Místek. The Commission considers that the Czech Republic has failed to take measures that should have been in place since 2005 to protect citizens' health, and is asking it to take forward-looking, speedy and effective action to keep the period of non-compliance as short as possible. Today's reasoned opinion follows an additional letter of formal notice sent on 22 February 2013. If the Czech Republic fails to act, the Commission may take the matter to the EU Court of Justice."[3]

9. Public access to information held by the European Parliament, Council and Commission is granted by Regulation (EC) No 1049/2001[4] which contains general provisions on access to information and Regulation (EC) No 1367/2006[5] which contains specific provisions concerning access to environmental information.

10. Article 4 (2), third indent, of Regulation (EC) No 1049/2001 states that *"the institutions shall refuse access to a document where disclosure would undermine the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure."*

11. Regulation (EC) No 1367/2006 provides in its Article 6 (1) preferential treatment to the requests for access to environmental information relating to emissions into the environment. In its first sentence, it states that as regards Article 4(2), first and third indents, of Regulation (EC) No 1049/2001, an overriding public interest in disclosure shall be deemed to exist where the information requested relates to emissions into the environment. This privilege is not given to information relating to infringement procedures.

12. According to the second sentence of Article 6 (1) of Regulation (EC) No 1367/2006, the grounds for refusal pursuant to Article 4 of Regulation (EC) No 1049/2001, concerning other requests for access to environmental information, *"shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and whether the information requested relates to emissions into the environment."* These provisions of Regulation (EC) No 1367/2006 transpose, into the EU law, the requirements of Article 4 (4) of the Convention on Access to Information, Public Participation

[3] European Commission - Fact Sheet: March infringements package: main decisions
http://europa.eu/rapid/press-release_MEMO-15-4666_en.htm

[4] 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

[5] Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies

in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), to which EU is a Party[6], according to which the grounds for refusal of the environmental information "*shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment*."

13. Under the right of access to documents provided by Article 15 (3) of the TFEU, as developed in Regulation (EC) No 1049/2001, Regulation (EC) No 1367/2006 and the Aarhus Convention, the Applicant requested access to the following documents related to the procedure opened by the Commission according to Art. 258 of the TFEU, concerning the possible infringement of the Czech Republic to fulfil the obligations under Directive of the European Parliament and Council of 21 May 2008, on ambient air quality and cleaner air for Europe, No 2008/50/EC:

    - the "Letter of Formal Notice" of 16 July 2010, sent by the Commission to the Czech Republic
    - the answer of the Czech Republic on the "Letter of Formal Notice", if existing
    - the additional Letter of Formal Notice sent by the Commission to the Czech Republic on 22 February 2013
    - the reasoned opinion issued by the Commission

    The request was sent on 7 August 2015.

14. The Applicant stated in the request that it is fully aware of the present case law of the Court of Justice of the European Union (hereafter "CJEU") interpreting access to documents on infringement procedures, but still it is convinced that the requested documents should be disclosed because of the overriding public interest that outweighs the supposed need for confidentiality of the infringement procedure and that must be considered by the Defendant when deciding about the access to information. The Applicant specified the reasons for the overriding public interest in the request.

15. The request of the Applicant was refused by the decision of the Defendant (the European Commission, Directorate General for Environment) dated 19 August 2015, reference number Ref GestDem No 2015/4284. The original document was delivered by registered post on 21 August 2015.

[6] 2005/370/EC: Council Decision of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters

16. The Defendant's position was that the documents requested are related to an on-going infringement procedure; hence they are covered by one of the exceptions provided for by the policy relating to access to documents and they cannot be made available. The Defendant referred to the CJEU case law and the need of sincere co-operation and a climate of mutual confidence between the Commission and the Member State concerned that are required to allow both parties to engage in a process of negotiation and compromise with the search for a settlement of a dispute without bringing it before the Court of Justice of the European Union. From the same reasons, the possibility of granting partial access to the requested documents in accordance with Article 4 (6) of Regulation 1049/2001 was found impossible.

17. The Defendant stated that it was unable to identify in this particular case the existence of an overriding public interest which could justify the disclosure of the requested documents. However, no further reasoning was provided in this respect.

18. The Applicant submitted a confirmatory application pursuant to Article 7 (2) of Regulation (EC) No 1049/2001 on 8 September 2015 asking the Defendant to reconsider its position and grant the access to the abovementioned documents. The Applicant explained why it believes there are the reasons for the overriding public interest on the disclosure of the information in more detail in its confirmatory application, in a similar way as in part IV of this Application below.

19. The applicant obtained a copy of the Defendant's decision (the European Commission, the Secretary General) dated 15 October 2015, reference number Ares(2015)4311297, on 15 October 2015. The original document was delivered by registered post on 21 October 2015.

20. In the latter decision, the Defendant states that the position of Directorate General for Environment that access to the requested information must be denied, on the basis of the need to ensure confidentiality (not to adversely affect the dialogue under Article 258 TFEU) must be upheld. This time, further reasoning was provided concerning the question of prevailing public interest (see below paragraphs 49 to 51 of this application).

IV. LEGAL GROUNDS

21. The Applicant is convinced that the contested Decisions are flawed.

22. First, the Applicant believes that the requested information should have been provided on the grounds of the overriding public interest in accordance with the last section of Article 4 (2) of Regulation (EC) No 1049/2001 and Article 6 (1) of Regulation (EC) No 1367/2006.

23. Second, the Applicant believes that the previous conclusion is further supported by the requirement to interpret the relevant EU legislation, in cases where environmental information relating to infringement cases is requested, in line with the Aarhus Convention and the jurisprudence of European Court of Human Rights.

IV. 1 Overriding public interest in disclosure

24. The Applicant, as it already stated in the original request and the confirmatory application, is fully aware of the present case law of the CJEU, interpreting access to documents on infringement procedures.

25. Nevertheless, the Applicant is convinced that the requested documents should have been disclosed because of the existence of overriding public interest that outweighs the supposed reasons for confidentiality of the infringement procedure. The Applicant believes that there is an overriding public interest in disclosure of the contested documents, for the following reasons:

26. The infringement procedure, to which the requested documents relate, affects millions of people. In the Czech Republic, excessive air pollution in specific areas is one of the most serious environmental problems.

27. The official Report on the Environment of the Czech Republic[7] states that in 2014 the limit value for twenty-four hour average concentration of PM10 (dust) has been exceeded on 8,1 % of the territory of Czech Republic, affecting 24,4 % of the population. This means that around 2,6 million people has been exposed to excessive concentrations of dust.[8] Similarly, according to the Czech Hydro-meteorological Institute´s 2014 annual report, the limit value for twenty-four hour average concentration of PM10 has been exceeded more times than allowed by the legislation on almost half of the monitoring

[7] Report on the Environment of the Czech Republic 2014, Ministry of Environment, available online: http://www.mzp.cz/C1257458002F0DC7/cz/news_151120_Zprava_o_ZP_2014/$FILE/ZpravaoZP2014.pdf

[8] Ibid. The situation was slightly better in comparison with the figures from 2012, worse in comparison with the figures from 2013. In 2013, thanks to the fact that there was a very mild winter, 5,7 % of the territory and 15,9 % of the population were affected. Report from 2013 is available also in English: http://www1.cenia.cz/www/sites/default/files/Report_on_the_Environment_of_the_Czech_Republic_2013.pdf

centers situated across the whole Czech Republic.[9] Twenty-four hour maximum concentration of PM10 recommended by WHO for protection of human health, was exceeded on 93 % of the territory of the Czech Republic.[10]

28. The official Report on the Environment of the Czech Republic estimates that PM10 caused around 5,8 thousand untimely deaths in 2014.[11]

29. The most extensive air pollution is particularly in Moravskoslezský region (1,2 million inhabitants), Ústecký region (800 thousand inhabitants) and in Prague (1,2 million inhabitants). Most of the monitoring centers, where the limit value for twenty-four hour average concentration of PM10 has been exceeded, were situated in these regions.[12] For example in the city of Ústí nad Labem, the last year's total number of days on which limits of particulate matter can be exceeded (35 days) was exhausted already in mid-March. In Moravskoslezský region it was even earlier, namely in Věřňovice, at the end of February.

30. In Radvanice and Bartovice, parts of the capital of Moravskoslezský region Ostrava, average concentration values of PM10 permanently exceed the legal limit (which is 40 μg/m³ as annual average limit value) and reached 43,7 μg/m³ in 2013 and 42,6 μg/m³ in 2014 on average.[13]

31. Also daily concentration of PM10 continuously exceeds daily limit values 3 to 4 times in Radvanice and Bartovice. Whereas the legislation allows 35 days on which limits of particulate matter can be exceeded during a year (as already mentioned above), limits were exceeded 116 times in 2012, 129 times in 2013 and 97 times in 2014[14].

32. The problem of air pollution (especially concerning PM10) is long-term and very serious, reportedly resulting in vast number of cases of asthma, cardiovascular problems, lung cancer and premature death. This outstanding issue of the excessive air pollution in the most affected regions is unbearable and demands immediate solution. All relevant data and information, which can be used by the affected individuals and NGOs for substituting their requests on the responsible authorities to take the necessary measures are highly important in this respect.

---

[9] http://www.chmi.cz/files/portal/docs/uoco/mes_zpravy/Rocni_zprava_2014.pdf
[10] Czech Hydro-meteorological Institute´s 2014 annual report, available online: http://portal.chmi.cz/files/portal/docs/uoco/zpravy/TZ_rocenka2014_CHMU.pdf
[11] Report on the Environment of the Czech Republic 2014, Ministry of Environment, available online: http://www.mzp.cz/C1257458002F0DC7/cz/news_151120_Zprava_o_ZP_2014/$FILE/ZpravaoZP2014.pdf
[12] Ibid.
[13] http://portal.chmi.cz/files/portal/docs/uoco/isko/tab_roc/2013_enh/pollution_hdqy/CZTOS_PM10_CZ.html; http://portal.chmi.cz/files/portal/docs/uoco/isko/tab_roc/2014_enh/pollution_hdqy/CZTOS_PM10_CZ.html
[14] http://portal.chmi.cz/files/portal/docs/uoco/isko/tab_roc/tab_roc_CZ.html

33. From this point of view, the Applicant considers the reasons of its request in the respective case and the public interest on disclosure of the requested documents as **pressing and capable of prevailing over the reasons justifying the refusal to disclose the documents, as presumed by the CJEU case law.**[15] As mentioned in the previous paragraphs, the information contained in the requested documents could be used by the public concerned to strengthen their argumentation when requesting the public authorities to take measures for immediate improvement of the air quality in the most polluted regions.

34. As stated above, the Applicant as a network of 12 environmental law NGOs located in several EU countries aims for a stronger environmental legislation and implementation on both the national and European Union stages to protect the environment, people and nature. Climate and pollution control are the topics that are part of its long-term mission.

35. Air pollution is also one of the most important topics dealt with its member organization Frank Bold which is based in the Czech Republic and Poland.[16] Since 2009/2010, Frank Bold provided legal as well as advocacy support for local initiatives in the Ostrava region affected by the air pollution ("Air", Vzduch from Bartovice, Radvanice, in last years also to "Clean Air", Čisté nebe from Ostrava, http://www.cistenebe.cz/).

36. Frank Bold focuses on the air pollution in the Czech Republic also on the systemic level. This for example covers the long term involvement in communication with the relevant stakeholders from local, regional and national level focused on Regional Air Quality Management Plans (Programmes pursuant Article 23 of the Directive) which are being prepared by the Ministry of Environment. Frank Bold also provided legal support to local citizens of Ostrava in a legal case where national courts in 2015 finally confirmed that the Czech Republic acted *contra legem* by not taking any effective measures and remedies to meet the air pollution limits in the city of Ostrava so far.

37. The important aspect of the above outlined activities (aiming to meeting the limit values, ensuring access to justice for the local people and availability of the credible data on the air pollution and its impact on health and environment, and related awareness raising actions) is an ongoing support for affected people, living in the regions which are of the most polluted in the EU. The basis for all these activities are the obligations of the Czech

[15] Judgement of 14 November 2013 in Joined Cases C 514/11 P and C 605/11 P (Liga para a Protecção da Natureza (LPN) and Republic of Finland v European Commission and Others, paragraph 93).
[16] http://en.frankbold.org/our-work/programme/clean-local-energy

Republic under the EU Directive No 2008/50/EC, on ambient air quality and cleaner air for Europe, and the fact that the above described situation of exceeded limits of PM10 represents a breach of these obligations.

38. The air pollution is a cross-cutting issue which shall be by its nature regulated by public authorities. However, the state policies implemented so far in the Czech Republic have not brought substantial change in terms of limiting the air pollution to the levels which would be necessary for the protection of public health and the environment (see paragraphs 8 and 26 - 31 above).

39. In this situation, the public concerned should have access to the information relating to the infringement of the relevant EU law (EU Directive No 2008/50/EC, on ambient air quality and cleaner air for Europe) by the Czech Republic. This is especially important with respect to the administrative procedures on the adoption of Regional Air Quality Management Plans that are currently being finalized on the grounds of the Czech Act No 202/2012 Coll., on Air Protection, and which should ensure reduction of the air pollution under the limit values in a short time. The requested information would help the public to efficiently participate in the related administrative procedures, to submit qualified comments and contribute to the solution of the long-term problem of air pollution in the Czech Republic.

40. Second, the Applicant's member organization Frank Bold provides free legal support to civil associations and individuals in administrative and court proceedings (concerning, among others, compensation claims for health damage caused by air pollution) in order to force the Czech Republic to solve the above described situation, which is contrary to the EU legislation and to adopt sufficient measures that would improve the air quality in the most polluted areas. The requested documents would enable Frank Bold to provide this support more effectively and hence induce the state to enforce the improvement in the area of air pollution.

41. **The requested information could therefore be directly used in order to promote the protection of health of the inhabitants of the polluted regions and of the environment in the Czech Republic by effectively enforcing the actions of the public authorities aiming for improvements of the air quality standards.**

42. Moreover, the experience and know-how might be then shared within the Applicant's network and best practice might be multiplied in other network countries having problems with air pollution.

43. Further, the content of the requested documents is crucial to precisely inform the public both about the work of the Commission that is done in order to ensure correct application of the EU environmental law and its enforcement and about the air pollution in the Czech Republic and last but not least, feasible solutions. When the public interest in disclosure of the information related to emissions into the environment is, in general level, established by the EU law, it also means that there is a public interest in knowing how Member States perform in terms of their compliance with the common legal framework of the European Union. There is clearly a public interest in knowing if there is a Member State that is doing poorly or even reaching a state of implementation of EU law that qualifies as a non-compliance calling for an infringement procedure. All these data should be available and accessible for the public in order to motivate Member States for a better compliance.

44. Lastly, the requested documents could be considered by other environmental NGOs dealing with air pollution issues in the Czech Republic which might have useful comments and information for the purposes of the infringement procedure itself. This could contribute to the proper conduct and outcome of the infringement proceeding.

45. At the same time, taking in mind the length of the infringement proceeding, i.e. the time for which the negotiations between the Commission and the Czech Republic could have already taken place, it is not likely that providing the requested information to the Applicant could in practice "undermine" any real possibility of the Czech Republic to comply of its own accord with the requirements of the Treaty and the respective EU directive as it already had many chances to do that. This rather hypothetical possibility is, in the Applicant's view, considerably overridden by the above listed reasons of public interest in disclosure of the requested information.

46. On the grounds of all the facts mentioned above, **the Applicant is convinced that in the sense of the CJEU case law, there is an overriding public interest in disclosure** of the information requested, namely because:

    - taking into account the above described specific circumstances relating to the scope and intensity of the air pollution in the Czech Republic, namely in the most affected regions, the principle of transparency with regard to the related information is

especially pressing and capable **of prevailing over the reasons justifying the refusal to disclose the documents**, as presumed by the CJEU Judgement of 14 November 2013 in Joined Cases C 514/11 P and C 605/11 P (Liga para a Protecção da Natureza (LPN) and Republic of Finland v European Commission and Others, paragraph 93 and 94)

- the Applicant is convinced that it has provided specific considerations which are able to provide an appropriate basis for establishing that the principle of transparency represents in a specific case an issue of particularly pressing concern as presumed by the CJEU judgement of 13 September 2013 in Case T‑111/11 (ClientEarth v European Commission, paragraph 109)

- the Applicant stated above the specific circumstances which justify the disclosure of the documents concerned, as presumed by the CJEU Judgement of 25 September 2014 in Case T-306/12 (Darius Nicolai Spirlea and Mihaela Spirlea v European Commission, paragraph 90)

- the members of the public concerned, including the Applicant, its member organization Frank Bold and the local NGOs and individuals, who at various levels aim to enforce the measures which would improve the current situation of air pollution in the Czech Republic, **should have a right to be informed of the extent to which the Czech Republic is not complying with the relevant EU environmental legislation;** moreover, disclosure of the required documents would help these members of the public concerned to effectively participate in concrete procedures, described above, and by these concrete means serve the interest of protecting public health and the environment in concrete cases (CJEU Judgement of 25 September 2014 in Case T-306/12 (Darius Nicolai Spirlea and Mihaela Spirlea v European Commission, paragraph 97)

- under the specific circumstances of the case, i.e. taking in mind the length of the relevant infringement procedure, the Defendant was not able to prove that the risk of the protected interest being undermined is reasonably foreseeable and not purely hypothetical (CJEU Judgement of 12 September 2007 in Case T-36/04 (Association de la presse internationale ASBL (API) v European Commission, paragraph 110)

47. In this respect, the Applicant further recalls that the environmental information shall enjoy special treatment in respect of the second part of Article 6 paragraph 1 of Regulation (EC)

No 1367/2006 and article 4, paragraph 4 of the Aarhus Convention, which state that the grounds for refusal shall be **interpreted in a restrictive way**, taking into account the public interest served by disclosure and whether the information requested relates to emissions into the environment. This is also the case of the requested documents.

48. Finally, the Applicant would like to address the arguments put forward by the Defendant in the latter contested decision (Decision of the Secretary General on behalf of the European Commission dated 15 October 2015).

49. First, the Defendant argues that documents relating to infringement procedures fall out of the scope of Article 6 paragraph 1 of Regulation (EC) No 1367/2006 (page 4 of the contested decision). In this respect, the Applicant states that, in his request and confirmatory application, it referred only to the second part of Article 6 paragraph 1 of Regulation (EC) No 1367/2006 which states that the grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and whether the information requested relates to emissions into the environment. Wording of this provision is analogical to Article 4, paragraph 4 of the Aarhus Convention, which applies to all kinds of environmental information and all possible grounds for refusal of such information and which should have been transposed by Regulation (EC) No 1367/2006 into the EU law. In respect of this fact, it is clear that the restrictive interpretation of grounds for refusal of environmental information shall be used in all cases where such kind of information is requested. Beyond that, according to the first sentence of Article 6(1) of Regulation (EC) No 1367/2006, information on emissions into the environment covered by the first and third indent of Article 4(2) Regulation (EC) No 1049/2001, with the exception of investigations, shall be provided in any case. Hence, the Applicant is convinced that **the second part of Article 6 (1) of Regulation (EC) No 1367/2006 is definitely applicable to documents relating to infringement procedures as they are not covered by the exemption introduced in the first sentence of Article (6) 1**. In other words, the Applicant states that while in cases involving investigations affecting information relating to emissions into the environment there is not an obligation of the European Commission to provide the information to the public without any limits, it still has the obligation to interpret any ground for refusal restrictively, taking into account the public interest served by disclosure and whether the information requested relates to emissions into the environment. Moreover, the Applicant underlines that even the notion of “emission into the environment” should be interpreted

restrictively as confirmed by the CJEU[17]. Hence, the Applicants concludes that the grounds for refusal of the information requested by it should have been interpreted in a restrictive way, with regard to the public interest served by disclosure and the fact that the information requested relates to emissions into the environment.

50. The Defendant also concludes that the public interest, contrary to everything what is claimed by the Applicant, "*is better served by maintaining the atmosphere of mutual trust between the Commission and the Member State concerned"*. This assertion is presented as a general experience of the Defendant. However, no grounds for this claim are provided, with respect to the specific circumstances of the case. Without concrete examples showing how the "atmosphere of mutual trust" (whatever it means) was undermined by providing environmental information in similar cases, which would support such an assertion, it could be seen only as a hypothetical proclamation with no real grounds. As already mentioned above, taking into account the length of the relevant infringement procedure and at the same time the factual situation concerning the air pollution in the Czech Republic, any possibility that the Czech Republic would, due to the infringement procedure as such, on its own accord meet the requirements of the EU law, seems to be purely hypothetical. The Applicant's long-term experience from the environmental cases on national levels, on the contrary, is that transparency and involvement of citizens often help to limit maladministration and raise both the responsibility of the authorities and persons in charge of public matters and the willingness to assert a positive change. In the present case, though the government shall be responsible to its citizens, it is actually much easier for it to "sweep something under the carpet" when its citizens do not have any information and may not apply qualified arguments and make a legitimate pressure to change things.

51. There are a number of examples when public access to infringement data helped urge national public authorities to implement national environmental laws more rigorously. In Hungary, for instance, the following cases resulted in more administrative scrutiny:

    EU Pilot 4064/12/ENVI: the forestry authority ordered the forest management company to redo forestry planning this time taking into account the Natura 2000 character of some affected forest lands

[17] Case T-545/11, Stichting Greenpeace Nederland and Pesticide Action Network Europe (PAN Europe) v European Commission (2013), paragraphs 52-53

EU Pilot 316/12/ENVI: the regional environmental agency ordered a hazardous waste disposal facility to conduct a full scale environmental audit and reconsider the classification of its activities from recycling to disposal

CHAP(2010)0214: the Mayor Office of Budapest reconsidered the renovation of the historical river bank of the River Danube and took into consideration the comments by the relevant monument protection NGO in the implementation of the project funded by the EU

52. Finally, the Defendant states that the need for an NGO to fulfil its statutory aims, which is among others promoting environmental standards in the case of the Applicant, does not constitute an overriding public interest in disclosure. Here, the Applicant argues that it does not see the overriding public interest in the need to fulfil its statutory aims. In the view of the Applicant, the fundamental overriding public interest is grounded in the need to effectively protect the health of millions of citizens adversely affected by the serious air pollution in the Czech Republic in the specific procedures, as described above. The Applicant is convinced that where the people are actually endangered by the long-term negligence of the Member State, in the area of the air pollution exceeding the limits, there is a public interest to provide the public with all relevant information so that they could enforce the improvement of the situation. It is all the more so, because the CJEU has already established a more stringent obligation on Member States in similar cases. In the Janecek case[18] the Court held: *"where there is a risk that the limit values for particulate matter may be exceeded, persons directly concerned can require the competent authorities to draw up an action plan"*. In such circumstances, the public concerned should be able to get information on the nature of the risk and its management by the Member State whose inactivity resulted in the risk itself.

53. For all the above reasons, the Applicant is convinced that with respect to the requested information, concerning the investigation of possible infringements of the EU law, there is an overriding public interest in disclosure in the sense of article 4 paragraph 2 of the Regulation (EC) No 1049/2001.

IV.2 Interpretation in line with international treaties

54. As stated above, the Applicant is aware of the present general approach of the Commission and the CJEU to the (non-)disclosure of information relating to the EU pilot

[18] Case C-237/07, Dieter Janecek v Freistaat Bayern (2008), paragraph 42

procedures and pre-litigation phase of infringement procedures, based on the argument that the aim is to give the Member State concerned an opportunity, on the one hand, to comply voluntarily with its obligations under EU law and, on the other hand, to avail of its right to defend itself against the objections formulated by the Commission, for which the secrecy and the "atmosphere of confidence" is necessary.

55. However, with reference to the case law of the European Court of Human Rights (ECtHR), and the requirements of the Aarhus Convention, to which the EU is a party, **the Applicant is convinced that this long-term practice of non-disclosure of any documents relating to the infringement procedures is in breach both of Article 10** of the European Convention on Human Rights (ECHR) and the **freedom to receive information** as interpreted by the ECHR and the Aarhus Convention.

56. The Applicant does not plead for the complete change of the existing case law. Nevertheless, the Applicant believes that some shift of interpretation of the applicable EU legislation (Regulation (EC) No 1367/2006, Regulation (EC) No 1049/2001) which would be more in line with EU international commitments, such as commitments resulting from the Aarhus Convention, is needed. After all, according to the settled CJEU case law, the secondary EU legislation shall be interpreted in conformity with international treaties to which the EU is a party.[19] This specifically concerns the Commission's and the CJEU's approach to the "restrictive interpretation" of the grounds for refusal of environmental information and the interpretation of conditions under which there is a need for confidentiality in the environmental infringement procedures prevailing over the "overriding public interest in disclosure".

57. Concerning the European Convention on Human Rights, though it is not formally part of EU law yet[20], Article 6 (4) of the consolidated version of Treaty on European Union expressly states that *"Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles*

[19] E.g., as stated in the Case 335/05, Řízení Letového Provozu ČR, s.p. v Bundesamt für Finanzen, (2007), paragraph 16: *"it is settled case-law that the primacy of international agreements concluded by the Community over secondary Community legislation requires that the latter be interpreted, in so far as is possible, in conformity with those agreements (Case C-61/94 Commission v Germany [1996] ECR I-3989, paragraph 52; Case C-286/02 Bellio F.lli [2004] ECR I-3465, paragraph 33; Case C-311/04 Algemene Scheeps Agentuur Dordrecht [2006] ECR I-609, paragraph 25; and Joined Cases C-447/05 and C-448/05 Thomson and Vestel France [2007] ECR I-0000, paragraph 30)."*

[20] On the grounds of Article 6 (3) of the consolidated version of Treaty on European Union: *"The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties."*

of the Union's law". Similarly, the CJEU in its continuing approach to the ECHR stresses its special significance as a key source of inspiration for the general principles of EU law[21] and has made extensive reference to the case law of the Court of Human Rights[22].

IV.2.1 European Convention on Human Rights and the case law of the ECtHR

58. As concerns the case law of the ECtHR, the applicant especially refers to the case Társaság a Szabadságjogokért v. Hungary, judgment of 14 April 2009, Application No 37374/05, where the European Court of Human Rights stated:

59. *"(26)* ***The Court has consistently recognised that the public has a right to receive information of general interest.***

60. *(27) In the present case, the preparation of the forum of public debate was conducted by a non-governmental organisation. The purpose of the applicant's activities can therefore be said to have been an essential element of informed public debate. The Court has repeatedly recognised civil society's important contribution to the discussion of public affairs (see, for example, Steel and Morris v. the United Kingdom (no. 68416/01, § 89, ECHR 2005 II).* ***The applicant is an association involved in human rights litigation with various objectives, including the protection of freedom of information. It may therefore be characterised, like the press, as a social "watchdog"...***

61. *(36) Moreover, the State's obligations in matters of freedom of the press include the elimination of barriers to the exercise of press functions where, in issues of public interest, such barriers exist solely because of an information monopoly held by the authorities. The Court notes at this juncture that the information sought by the applicant in the present case was ready and available (see, a contrario, Guerra and Others v. Italy, 19 February 1998, § 53 in fine, Reports of Judgments and Decisions 1998-I) and did not require the collection of any data by the Government.* ***Therefore, the Court considers that the State had an obligation not to impede the flow of information sought by the applicant.****"*

[21] See e.g. Case C-299/95, Kremzow v. Austria (1997): "*The Court has held on a number of occasions [FN4] that, as the Court has consistently held, fundamental rights form an integral part of the general principles of law, the observance of which it ensures. For that purpose the Court draws inspiration from the constitutional traditions common to the Member States and from the guidelines supplied by international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories (see, in particular, Case 4/73, Nold v. E.C. Commission: [1974] E.C.R. 491, paragraph [13]). The European Convention on Human Rights has special significance in that respect...."*

[22] E.g. Case C-274/99P, Conolly v. Commission (2001), paragraphs 39 to 51, also relating to Article 10 which guarantees freedom of expression.

62. The Applicant is convinced that the above quoted interpretation is applicable also to cases of the environmental NGOs requesting information relating to the EU pilot procedures and pre-litigation phase of infringement procedures, including the present case.

63. Similarly, also the Charter of Fundamental Rights of the European Union[23] guarantees in its Article 11 the right of access to information. According to this Charter *"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers".* Access to information on infringement procedure shall thus be interpreted also in light of this fundamental EU document.

64. Also, the wording of the Charter is very close to the wording of Article 19 (2) of the International Covenant on Civil and Political Rights according to which: *"Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."* The fact that the freedom of expression declared by the Covenant covers also the access to information was confirmed by the UN Human Rights Committee General Comment 34, paragraphs 18 and 19[24].

65. In the contested Decision of the Secretary General on behalf of the European Commission dated 15 October 2015, the Defendant states that the fundamental right of access to documents is not an absolute right and that certain restrictions of that right - based on the applicable laws and jurisprudence - are fully justified. Further, it refers to paragraph 60 of the judgment in the Technische Glaswerke Ilmenau case, where the CJEU stated that in administrative matters, such as the ones at stake, the public interest in transparency does not carry the same weight as in legislative matters.

66. The Applicant agrees that the right to access to information is not an absolute right and that certain restrictions of that right - based on the applicable laws and jurisprudence - are justified. However, there are also limits to such restrictions which shall be respected. The interpretation of such restrictions shall be restrictive, not extensive. The Applicant has referred to the Társaság a Szabadságjogokért v. Hungary ECtHR judgment to underline the ECtHR approach to the interpretation of the right to access to information and its

[23] Article 6 (1) of the consolidated version of Treaty on European Union: *"The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties."*
[24] Available online: http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf.

possible limitations. The ECtHR interprets its possible limitations restrictively, in relation to whether such limitations are necessary in a democratic society. In this respective case, the ECtHR stated that even though the interference with the applicant's freedom of expression may have been prescribed by the law and there may have pursued the legitimate aim, still, it *"cannot be regarded as having been necessary in a democratic society. It follows that there has been a violation of Article 10 of the Convention."* [25] The Applicant is convinced that in the present case the refusal to the requested information has not been necessary in a democratic society.

67. As to the reference to the Technische Glaswerke Ilmenau case conclusions, it seems that the Defendant interlinks them with the nature of information requested in the Társaság a Szabadságjogokért v. Hungary ECtHR case. In this respect, the Applicant underlines that what was requested in the very ECtHR case was a MP's complaint for abstract review of some amendments to Criminal Code pending before the Constitutional Court. In the view of the Applicant, this type of information is very similar to the information requested by the Applicant in the present case, where the information is relating to the proper **implementation of the EU legislation** and it is seen as being part of a running judicial proceedings (though its pre-litigation/investigation phase). Hence, neither the information requested in the ECtHR case, nor the information requested by the Applicant concern "purely legislative matters", though both of them relate to legislation. As cited above in

[25] The ECtHR summarises general principles concerning the necessity of an interference in a democratic society in the Case of Animal Defenders International v. The United Kingdom, judgment of 22 April 2013, Application No 48876/08, paragraph 100:
"(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'. As set forth in Article 10, this freedom is subject to exceptions, which ... must, however, be ***construed strictly, and the need for any restrictions must be established convincingly*** *...*
(ii) The ***adjective 'necessary', within the meaning of Article 10 § 2, implies the existence of a 'pressing social need'****. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a 'restriction' is reconcilable with freedom of expression as protected by Article 10.*
(iii) The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine ***whether it was 'proportionate to the legitimate aim pursued' and whether the reasons adduced by the national authorities to justify it are 'relevant and sufficient'****.... In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts ...."*

paragraphs 59 and 60, the ECtHR concluded that the State had an obligation not to impede the flow of information sought by a social "watchdog" organization, even though the information requested was held by the Constitutional court and was a part of the court files.[26] The Applicant is convinced that the Társaság a Szabadságjogokért v. Hungary ECtHR judgment is fully relevant and the interpretation it has provided should be taken into account when interpreting the present Application.

68. Further, the Applicant refers also to later judgements of the ECtHR confirming its approach to the freedom of expression and right to receive information of general interest, namely judgment of 28 November 2013 in case of Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung eines wirtschaftlich gesunden land- und forstwirt-schaftlichen Grundbesitzes v. Austria, Application No 39534/07[27] and judgment of 25 June 2013 in case of Youth Initiative for Human Rights v. Serbia, 48135/06.

IV.2.2 Aarhus Convention

69. As for the requirements of the Aarhus Convention, the Applicant has already pointed out above that this international treaty, to which the EU is a Party, contains Article 4 paragraph 4 according to which grounds for refusal of the environmental information "*shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment*." The Applicant is convinced that this general principle should be applied with respect to any of the grounds for refusal of environmental information

[26] Please compare paragraphs 7 to 15 of the Társaság a Szabadságjogokért v. Hungary judgment

[27] ECtHR judgement of 28 November 2013 in case Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung eines wirtschaftlich gesunden land- und forstwirt-schaftlichen Grundbesitzes v. Austria, Application No 39534/07, paragraphs 46-47: "*46. Given that the Commission is a public authority deciding disputes over "civil rights" within the meaning of Article 6 of the Convention (see, Eisenstecken v. Austria, no. 29477/95, § 20, ECHR 2000-X, with further references), which are, moreover, of considerable public interest, the Court finds it striking that none of the Commission's decisions was published, whether in an electronic database or in any other form. Consequently, much of the anticipated difficulty referred to by the Commission as a reason for its refusal to provide the applicant association with copies of numerous decisions given over a lengthy period was generated by its own choice not to publish any of its decisions. In this context the Court notes the applicant association's submission - which has not been disputed by the Government - that it receives anonymised copies of decisions from all other Regional Real Property Commissions without any particular difficulties.*
47. In sum, the Court finds that the reasons relied on by the domestic authorities in refusing the applicant association's request for access to the Commission's decisions - though "relevant" - were not "sufficient". While it is not for the Court to establish in which manner the Commission could and should have granted the applicant association access to its decisions, it finds that a complete refusal to give it access to any of its decisions was disproportionate. The Commission, which, by its own choice, held an information monopoly in respect of its decisions, thus made it impossible for the applicant association to carry out its research in respect of one of the nine Austrian Länder, namely Tyrol, and to participate in a meaningful manner in the legislative process concerning amendments of real property transaction law in Tyrol. The Court therefore concludes that the interference with the applicant association's right to freedom of expression cannot be regarded as having been necessary in a democratic society."

according to the relevant provisions of the EU legislation, and that these provisions should be interpreted "to the fullest extent possible" in compliance with this principle. The Applicant refers, in this respect, by analogy to the CJEU judgment of 8 March 2011 in case C 240/09 (Lesoochranárske zoskupenie), paragraph 51.

70. The Applicant stresses that it does not propose that the CJEU should apply Article 4 paragraph 4 of the Aarhus Convention directly in the present case, nor that any of the relevant provisions of the Regulations (EC) No 1049/2001 and (EC) No 1367/2006 should be declared as incompatible with that provision. **Rather, the requirements of the Aarhus Convention should support such interpretation of relevant provisions of these regulations (Article 4, paragraph 2 of Regulation (EC) No 1049/2001, together with Article 6, paragraph 1 of Regulation (EC) No 1367/2006), according to which there is an overriding public interest in disclosure of the requested information.**

IV.2.3 EU principle of transparency

71. Finally, the Applicant is convinced that the present approach of the Commission and the case law of the CJEU is not in compliance with the general EU principle of transparency which guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to citizens when transparent, and this contributes to strengthening the principle of democracy. Democratic states should be on duty to theirs citizens, not the officials representing them. A democratic state should not be afraid of informing its own citizens that it is not managing to comply with some of its obligations which – as a result – deteriorates the life of the citizens. This is one of the features of democratic systems, in contrast to non-democratic ones. The Applicant believes that the present secrecy-based-atmosphere-of-confidence-approach is actually violating the democratic values the EU otherwise stands for.

72. On all the above mentioned grounds the Applicant appeals to the CJEU to revise its approach to providing information on environmental infringement procedures and make it more transparent and open to the EU citizens.

V. ORDER SOUGHT

For the reasons outlined above the Applicant respectfully request the General Court to:

I. declare the contested Commission Decision of 19 August 2015, reference number Ref GestDem No 2015/4284 null and void,

II. declare the contested Commission Decision of 15 October 2015, reference number Ares(2015)431129715 null and void,

III. order the Commission to pay the costs of the proceeding.

Done in Brno, Czech Republic on 14 December 2015, on behalf of the Applicant,

by mgr. jur. Sandra Podskalská, licensed attorney at law.

mgr. jur. Sandra Podskalská

on behalf of the Applicant