Accessing Infringement Data on the National Level

Transparency of the EU Pilot and Infringement Procedures on the Member State Level

Public Toolkit
I. Introduction

The implementation of access rights (to information, to participation and to justice) in environmental matters enjoys a high esteem and is becoming more and more part of policy-making and decision-making in EU institutions and in EU Member States alike. However, one cannot hide that neither the legislation nor the implementation thereof is complete in the EU and in the UNECE region.

Enforcement by legal tools of access rights is required in order to improve compliance. Justice and Environment (J&E) is committed to be active in the enforcement of the rights, with special regard to a selected topic sub-area, i.e. access to documents held by EU institutions and especially to data on Pilot and infringement procedures.

Our previous efforts in earlier years (e.g. in 2016) were targeted at testing how access to the foregoing data can be ensured via requesting EU institutions for disclosure and later applying legal remedies against these institutions. Later we tried to get access to these data via national authorities, via Member State public institutions.

In this current study, we will be detailing how access to documents generated in infringement procedures is approached by public authorities on the Member State level and what kind of legal remedies are available in case access is not guaranteed. This toolkit summarizes our experience in this matter after a renewed effort to get access to the requested data and contains our conclusions on whether such access can be had via approaching Member State public authorities. It is even more important, knowing that most of the infringement cases in the EU are initiated in environmental matters.

II. What is an infringement case?¹

According to the EU treaties, the Commission may take legal action – an infringement procedure – against an EU country that fails to implement EU law. The Commission may refer the issue to the Court of Justice, which in certain cases, can impose financial penalties.

Stages of an infringement procedure

The Commission identifies possible infringements of EU law on the basis of its own investigations or following complaints from citizens, businesses or other stakeholders.

Formal procedure

If the EU country concerned fails to communicate measures that fully transpose the provisions of directives, or doesn’t rectify the suspected violation of EU law, the Commission may launch a formal

infringement procedure. The procedure follows a number of steps laid out in the EU treaties, each ending with a formal decision:

1. The Commission sends a letter of formal notice requesting further information to the country concerned, which must send a detailed reply within a specified period, usually 2 months.

2. If the Commission concludes that the country is failing to fulfil its obligations under EU law, it may send a reasoned opinion: a formal request to comply with EU law. It explains why the Commission considers that the country is breaching EU law. It also requests that the EU country inform the Commission of the measures taken, within a specified period, usually 2 months.

3. If the EU country still doesn’t comply, the Commission may decide to refer the matter to the Court of Justice. Most cases are settled before being referred to the Court.

4. If an EU country fails to communicate measures that implement the provisions of a directive in time, the Commission may ask the Court to impose penalties.

5. If the Court finds that a country has breached EU law, the national authorities must take action to comply with the Court judgment.

**Non-compliance with a Court decision**

If, despite the Court's judgment, the EU country still doesn't rectify the situation, the Commission may refer the country back to the Court.

**Financial penalties**

When referring an EU country to the Court for the second time, the Commission proposes that the Court impose financial penalties, which can be either a lump sum and/or a daily payment.

These penalties are calculated taking into account:

- the importance of the rules breached and the impact of the infringement on general and particular interests
- the period the EU law has not been applied
- the country's ability to pay, ensuring that the fines have a deterrent effect

The amount proposed by the Commission can be changed by the Court in its ruling.

**Publication of infringement decisions**

Information about Commission decisions on infringements is available online. One can search for this information by EU country, policy area or date.

The Commission also publishes an annual report reviewing key aspects of the application of EU law and presenting infringement cases by policy area and country (Annual reports on monitoring the application of EU law).
III. What is access to information or access to documents?²

Article 15 of the Treaty on the Functioning of the European Union states that citizens and residents of the European Union have a right of access to European Parliament, Council and Commission documents.

Access to documents is an essential component of the policy of transparency being implemented by the European institutions. Under the Treaty, all EU citizens and all residents of the Union enjoy this right of access, which is governed by Regulation (EC) No 1049/2001.

In order to facilitate access to documents, as provided for in Regulation (EC) No 1049/2001, most of the EU institutions have established an electronic Register of documents. Intended as a search aid, it contains the references of documents drawn up or received by the European institutions.

Documents that are directly accessible

The Register provides direct access to the majority of European institution documents via a search form. The documents are directly accessible in electronic format.

Documents that are accessible on request

Documents which cannot be consulted directly on the Register may be supplied on request. This is the case with documents to which access may be restricted on the basis of the exceptions to the right of access provided for in Article 4 of Regulation (EC) No 1049/2001. Access to them is free of charge and the request does not require any special justification. After considering a request, the service responsible in the European institution will send a reasoned reply within 15 working days.

It is a fundamental feature of access to documents that it only applies to requests for information held by EU institutions, from the EU institutions. However, as you will see later, in some Member States the national public authorities frequently mix the concept of access to information with access to documents and apply the more restrictive rules also in situations when a certain data was requested not from an EU institution but from a national public authority.

IV. Comparative survey

In order to collect information, J&E’s Aarhus Convention Topic Team undertook a survey within its member organizations, covering 6 Member States (Austria, Croatia, Czech Republic, Hungary, Slovakia and Spain).

The present toolkit summarizes knowledge and experience in these Member States relating to access to infringement data on the national level, and as an Annex, includes a so-called problem list from the countries.

The questions made to each country researcher were the same, i.e.

- How can one get access to information on the national level?
- How can one get access to infringement information on the national level?
- Conclusion on accessibility of infringement information on the national level
- Contact information to the researcher and the competent authority

The findings of the survey were the following:

Austria

What law governs ATOI in your country?

Unfortunately, the access to information is governed by the principle of official confidentiality (Amtsverschwiegenheit) in Art 20 para 3 Federal Constitutional Law. Only by exception to this principle, paragraph 4 stipulates the authorities’ duty to provide information upon request, which leads to the undesirable consequence that the lion share of information is not available to the public. Austria is one of the last European countries with such a restrictive approach. In 2015, a draft of a Freedom of Information Act (that would have abolished official confidentiality) was submitted to parliament for public assessment, but unluckily it did not receive the necessary political support. Justice & Environment Austria pushed for amendments that would have required a uniform process for federal and state level, timely responses from the authorities and effective legal remedies in case of turned down requests.

Besides the existing, insufficient constitutional provision on access to general information, there are specific laws: General (non-environmental) matters are governed by the federal Duty to Grant Information Act ("Auskunftspflichtgesetz"), which substantiates the above-mentioned Article 20 paragraph 4 Federal Constitutional Law and requires authorities to provide information to natural or legal persons within 8 weeks, or deny it with a formal decision, which can then be appealed. Such a request is free of charge. The 9 states (Bundesländer) have adopted similar laws.

As regards information related to the environment, the relevant act at the federal level is the “Umweltinformationsgesetz” (environmental information act), which governs access to most aspects of environmental information. This act implemented Directive 2003/4/EC on public access to environmental information. In the 9 federal states (Bundesländer), similar state laws (Landesgesetze), which are also in accordance with the directive, apply.

The following questions will be answered with regard to the federal environmental information act ("Umweltinformationsgesetz"), which represents the most important legal instruments regarding access to information related to the environment.

Who can claim access to information?

Under the environmental information act, any legal or natural person can request information. There is no need to prove that one is legally or otherwise affected by the matter inquired.

From whom can one claim information?

Information can be requested from all authorities holding relevant information, be it federal, state, district or local authorities, as well as outsourced entities and other public entities that perform government functions. In theory, authorities are required to keep a list of entities that hold environmental information, but in reality, a list seems to be rather non-existent.

In what form can one claim information?

A request can be submitted in writing or orally, and in any technical form that authorities are able to receive: letter, e-mail, phone call, even via SMS.

How long does the data holder need to answer?

In general, answers should be provided within one month time, however, for more complex requests, a 2-months period is foreseen.

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3 Federal Law Gazette No. 287/1987
What are the possible answers?

The authority can provide full access, restrict some information or withhold the answer completely. Absolutely open environmental information, e.g. on the quality of water, air, atmosphere, biodiversity and radiation exposure, are always to be disclosed. Other information might only be partially released taking into account business secrets or public security.

In case of refusal of information, what are the available remedies?

In case the authorities deny the access to information, they need to do so by formal decision (Bescheid). This decision can then be appealed before the administrative courts. In case an outsourced entity without the competence to issue such a formal decision is concerned, the superordinate supervision authority is to provide information or issue the decision, which can then be appealed.

How can one get access to infringement information on the national level?

Who is managing infringement information (who is in contact with the EC)?

As indicated in the study 2016, the Austrian Federal Chancellery is the coordinating government entity.

Is there a list of infringement cases against the country publicly available?

No, there is none comparable to the one by the Commission. A list broken down by different categories of proceedings (amicus curiae role of Austria before the CJEU against other member States, participation in preliminary judgment proceedings, proceedings submitted to the CJEU, proceedings commenced by the Commission, and EU pilots) could theoretically be obtained via the (somewhat cumbersome) route of a parliamentary inquiry (enquête) to the government, as happened in early 2015, when the Green Party requested such a list. Note that individuals, of course, cannot conduct such a parliamentary inquiry.

How much information can the public get on ongoing infringement cases?

Until now, none. The formal request for information on infringement proceedings referred to below (see the answer to the last question) will show whether the Federal Chancellery will have to provide information, and if so, how much information in its role as a coordinator it will have to provide. Justice & Environment Austria requested to receive the anonymised complaint by the third party to the Commission, the letter of formal notice to Austria, and Austria’s response to this formal notice, all of which the Federal Chancellery declined to hand over.

How much information can the public get on closed infringement cases?

The situation is the same as with ongoing infringement procedures. We don’t know yet if and to what extent the Federal Chancellery will have to provide the information. Already now, the Federal Chancellery distributes information regarding specific CJEU decisions on all sorts of EU law via a newsletter (Rundschreiben - German only) to government bodies.

Has there been cases for getting access to infringement information at the court?

Yes, as elaborated in the 2016 study by J&E “National Level Access to Infringement Documents” and in the answers above, Justice & Environment Austria waits for a ruling by the Highest Administrative

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Court (Verwaltungsgerichtshof) regarding the disclosure of information connected to three infringement proceedings. The Federal Chancellery as the coordination entity had denied those, based on the argument that infringement proceeding documents (which are related to the environment) were not subject to the federal environmental information act. The Federal Administrative Court (Bundesverwaltungsgericht) rejected the view of the Federal Chancellery. After the appeal by the latter, the case is yet to be decided by the Highest Administrative Court (Verwaltungsgerichtshof), hopefully in the first half of 2018.

What was their outcome?

The case is not closed yet, it’s upon the Highest Administrative Court to have the last word on it. But as an initial positive outcome, the Federal Administrative Court already stated that correspondence between an EU Member State and the European Commission when investigating an infringement of EU law can be environmental information. The court affirms that access to environmental information is in the public interest and it states that consequently information can only be refused in exceptional cases. In its decision, the Federal Administrative Court rejects the notion of flat-rate refusals. Grounds for refusal of disclosure have to be assessed for each individual case.

Conclusion on accessibility of infringement information on the national level

What is your conclusion, can one get access to infringement information in your country and if yes, how?

Until now, individual persons and NGOs officially do not have access to information on infringement proceedings.

The main reason for this is the constitutionally enshrined principle of “official confidentiality” mentioned above: “All functionaries entrusted with federal, provinces and municipal administrative duties as well as the functionaries of other public law corporate bodies are, save as otherwise provided by law, pledged to confidentiality about all facts of which they have obtained knowledge exclusively from their official activity and which have to be kept confidential in the interest of the maintenance of public peace, order and security, of comprehensive national defence, of external relations, in the interest of a public law corporate body, for the preparation of a ruling or in the preponderant interest of the parties involved (official confidentiality).” (Art 20 para 3 Federal Constitutional Law6)

The general Duty to Grant Information Acts have to obey this principle and usually refer to it in their texts. E.g. “The organs of the Federation as well as the organs of the self- administration to be regulated by the Federal Legislation shall give information on matters within their scope of activities to the extent not being in contradiction to a statutory duty of secrecy.” (§ 1 Federal Duty to Grant Information Act)

In comparison, the Environmental Information Acts grant broader access to information. The grounds for refusal are much narrower in their scope of application.

Once the Highest Administrative Court (Verwaltungsgerichtshof) has decided on the matter (hopefully in the first half of 2018) and if it clarifies that infringement information (related to the environment) falls under the scope of the environmental information act

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(Umweltinformationsgesetz) and that grounds for refusal have to be applied individually and only exceptionally, then access to infringement data in individual cases might be generated for the public.

Contact information

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**How can one get access to information on the national level?**

ATOI is regulated by the Act on the Right of Access to Information (hereinafter: FoIA Act) (Zakon o pravu na pristup informacijama) (Official Gazette no. 25/2013, 85/2015).

According to the FoIA Act beneficiary of the right of ATOI is any local or foreign natural person or legal entity (Article 5/1.)

Beneficiaries of the right of ATOI can claim information from “public authority bodies” in Croatia. These are “public authorities, other state authorities, bodies of the local and regional self-government units, legal entities with public competences and other persons holding public competences, legal entities established by the Republic of Croatia or the local and regional self-government units, legal entities and other persons engaged in public administration, legal entities entirely funded by the state budget or the budget of the local and regional self-government units, as well as companies in which the Republic of Croatia or the local and regional self-government units hold individual or joint majority ownership” (Article 5/2.).

There are around 6000 public authorities in the Republic of Croatia, and it is the Information Commissioner who manages the list thereof. This list is publicly available on the following link: [http://tjv.pristupinfo.hr](http://tjv.pristupinfo.hr), accessible in form of an application, and as a reusable dataset.

The beneficiary can submit a request in writing (including e-mail) or orally (Article 18/1.).

According to the FoIA Act written request should contain: name and address of the public authority body which the request shall be submitted to, data relevant for recognizing the requested information (a description of the information), name, surname and address of the natural person submitting the request or company name (Article 18/3.). The beneficiary of the request shall not be obliged to mention the reasons for requesting ATOI, nor is required to refer to FoIA Act.

In the case of an orderly request, data holder needs to issues its decision within 15 days from the day of submission (Article 20/1.). Deadlines for exercising the right of ATOI may be prolonged for 15 days from the day when the data holder was expected to decide on the request for ATOI if the information must be sought outside of the public authority body, if numerous different information are requested in a single request, if this is necessary in order to ensure the accuracy and integrity of the requested information or if the situation requires conducting the Proportionality Test and the Public Interest Test (Article 22/1.).

Data holder can provide access to information. A data holder may partially or absolutely restrict access to the information if the information relates to statutory limits and if it has conducted the appropriate procedures, usually a Proportionality Test and a Public Interest Test. (Article 23.). In the case of incomplete or incomprehensible request, if the beneficiary fails to correct the request in the appropriate manner in due time, and the original request does not provide clear information as to the information requested, the public authority body shall reject the request by issuing a decision (Article 20.).

A beneficiary may file an appeal to the Information Commissioner against the data holder’s decision to refuse or reject a request within 15 days of the date of delivery of the decision. A beneficiary can also submit an appeal to the Commissioner when data holder does not issue a decision on his request within 15 days.
The Commissioner issues a decision on the appeal within 30 days, or within 60 days (when examining the validity of the Proportionality and Public Interest Test), or 90 days (when dealing with classified information and must consult the Office of the National Security Council) (Article 25.)

The beneficiary, as well as a data holder, may initiate an administrative dispute by filing a lawsuit to the High Administrative Court against the Commissioner’s decision within 30 days of the date of delivery of the decision. The beneficiary may also initiate an administrative dispute when the Commissioner does not issue a decision within the legal deadline (Article 26.).

How can one get access to infringement information on the national level?

Croatian Ministry of Foreign and European Affairs (Ministarstvo vanjskih i europskih poslova) is a focal point towards EC for the management of infringement cases and information.

List of infringement cases against Croatia has not been made public by responsible Croatian authorities.

According to our best knowledge (January, 2018.), only 2 requests for ATOI related to the ongoing (environmental/nature) infringement cases were made. Both requests were denied by Croatian Ministry of Foreign and European Affairs.

Environmental NGO Zelena Istra requested information on the EU pilots 6986/14/ENV, 6985/14/ENV, 8654/16/ENV i 8855/16/ENV and on the violation of the EU law no. 2016/2128 (request was made on 23rd September 2017, Decision to refuse request was made on 9th October 2017.).

Nature protection NGO Biom requested information on the EU pilot 7372/15/ENVI and on the violation of the EU law no. 2016/2017 (request was made on 25th September 2017, Decision to refuse request was made on 9th October 2017).

Ministry of Foreign and European Affairs has refused access to the requested information on the same merits. Ministry claimed that the requested documents belong to the Commission and only Commission thereto can guarantee access. As regards the response of the national authorities sent to the Commission in the infringement procedure, the Ministry claimed that these fall under the national Freedom of Information Act, and as such, fall under the Proportionality and Public Interest Test. Upon completing, the Proportionality Test Ministry decided that the data holder’s interests prevail, and that by the disclosure of relevant information to the information seeking party ongoing procedure with the EC would be undermined.

Both organizations decided not to appeal to Information Commissioner against the Ministry of Foreign and European Affairs decision. Consequently, there were no cases before the High Administrative Court for getting access to infringement information.

Conclusion on accessibility of infringement information on the national level

Unfortunately, because organizations decided not to pursue an appeal, there is no knowledge on the Information Commissioner standpoint relating to the accessibility of infringement information. However, in accordance with our previous experience on ATOI in Croatia we can presume that the data holder will continue to deny access to the ongoing infringement cases.
Contact information

Your contact information

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Contact information of the body managing infringement cases in your country

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How can one get access to information on the national level?

What law governs ATOI in your country?

In the Czech Republic, there are two legal acts which implement the right to information guaranteed by the Constitution and the Aarhus Convention. These are: general Act on Free Access to Information (No. 106/1999 Coll.) and special Act on the Right to Environmental Information (No. 123/1998 Coll.).

In case an applicant requests environmental information (information falling within the scope of the definition given by the Act on the Right to Environmental Information), special Act on the Right to Environmental Information shall be applied. In every other case, the general Act on Free Access to Information applies. It is up to the responsible authority or person to determine on the grounds of which act the information is going to be provided (or refused).

Who can claim access to information?

Generally speaking, some information is actively published by authorities and persons who have a duty to provide information on the grounds of the mentioned information acts. The rest of information can be obtained on the grounds of a request sent to the responsible authority or person.

Everybody can claim access to information on the grounds of the above mentioned information acts. He or she does not even have to be a citizen of the Czech Republic or EU.

From whom can one claim information?

The Czech law generally uses a term “legally bound person” as a person who have a duty to provide information related to its competencies and scope of activity.

These are – according to the both information acts – state agencies, municipalities and regions and their bodies.

On the grounds of the Act on Free Access to Information, also other “public institutions” are considered to be legally bound persons in terms of providing information. Whether an institution is public or not is often defined by the case law.

Further, legally bound persons in terms of the Act on Free Access to Information are considered such entities which have been entrusted by law to decide on the rights, legally protected interests or duties of persons or legal entities in the area of public administration (to the extent of their decision making activity only).

On the grounds of the Act on the Right to Environmental Information, persons legally bound to provide environmental information are

- those legal and natural persons who on the grounds of a specific legal act exercise competences belonging to public administration, directly or indirectly relating to the environment (such as a “nature watch” for example, which is entitled to impose fines to a person deteriorating the nature),

- “authorised persons” meaning natural persons authorised or legal persons founded, governed or authorised by state agencies, municipalities and regions or legal and natural persons mentioned in the previous paragraph who on the basis of law or an agreement with such authorising body provide services which influence the state of the environment.
In what form can one claim information?

Information may be requested orally, via phone, via email, via certified electronic data service, via post. In case of requesting information in person, the applicant may be asked to submit written request.

It can be specified by the applicant, in what form the information shall be provided (CD, paper...).

Answers may be provided in the same way – in person (orally), via phone, via email, via certified electronic data service, via post (on paper, CD).

As a sufficient answer, it may also be referred to the previously published information in some cases.

How long does the data holder need to answer?

On the grounds of the general Act on Free Access to Information, the information requested must be provided within 15 days period, starting the day after the request was obtained.

On the grounds of the special Act on the Right to Environmental Information, the information must be provided within 30 days period; this deadline can be extended, for serious reasons, on 60 days as maximum.

What are the possible answers?

Following a request for information, a requested authority or person who has a duty to provide information may take one of the following actions:

a) Act on Free Access to Information

Letters a) to f) introduce actions prescribed by the law, letter g) describes an unlawful action that an applicant may face in reality, though.

   a) The applicant is called upon to specify the request if found incomprehensible, too general or if it is not clear what information exactly is requested. If not specified by the applicant, the request is dismissed.

   b) The applicant is called upon to complete the request in case such data about the applicant is missing that it is not possible to provide requested information. If not completed by the applicant, the request is set aside.

   c) The request is set aside in case the information requested does not relate to the scope of authority of the requested subject.

   d) The request is refused (access to information is denied on the grounds of some of the reasons stated by law).

   e) The applicant is called upon to pay for the expenses relating to providing answers to his or her request first (before the answer is provided).

   f) The information is provided

   g) The request for information remains without any answer or only a part of requested information is provided without any explanation (in this case, a requested authority violates the law, as it is obliged to take one of the legally anticipated actions, as described in the before-mentioned paragraphs).
b) Act on the Right to Environmental Information

Letters a) to c) introduce actions prescribed by the law, letter d) describes an unlawful action that an applicant may face in reality, though.

a) In case the request is sent to an authority or person who has a duty to provide environmental information but does not have the information requested at his disposal and is not obliged to have it at his disposal, the applicant shall be informed that the requested information cannot be provided for these reasons. In case the requested person knows what other authority or person is obliged to provide such information and has it at his disposal, the request shall be resent and the applicant informed about it.

b) The request is refused (access to information is denied on the grounds of some of the reasons stated by law).

c) The information is provided.

d) The request for information remains without any answer or only a part of requested information is provided without any explanation (in this case, a requested authority violates the law, as it is obliged to take one of the legally anticipated actions, as described in the before-mentioned paragraphs).

NB: According to the Act on the Right to Environmental Information, the applicant may not be called upon to pay for the expenses relating to providing answers to his or her request before the answer is provided, the answer shall be provided first.

**In case of refusal of information, what are the available remedies?**

In case a request for information is refused (or partly refused), the person requesting the information can appeal against the decision on refusing the information to the superior administrative body (according to the both information acts).

In respect of the Act on the Right to Environmental Information, the same applies in case that the request for information remains without any answer or only a part of requested information is provided without any explanation. In such case, the law presumes that the decision on refusing the information was issued. If a superior administrative authority confirms the decision on refusing the information, it is possible to file a lawsuit against such decision to the administrative court.

In case that the request for information requested on the grounds of the general Act on Free Access to Information remains without any answer or only a part of requested information is provided without any explanation, the applicant may file a complaint to a superior administrative authority. If the superior authority does not provide protection to the applicant’s rights, a lawsuit against inaction may be filed afterwards – if successful, the court shall order the requested authority to deal with the request formally (it does not matter at this stage whether it will be provided or refused at the end of the day).

On the grounds of both information acts, in case that the answer is considered to be wrongful (which would be difficult to prove, though), the only possibilities are to address the chief of the respective authority with a general complaint for maladministration or to repeat (specify) the request.

According to the general Act on Free Access to Information, the courts can order the authority to disclose the information required. Such provision is, however, not contained in the Act on the Right to Environmental Information, which shall apply preferentially with respect to requests for
environmental information. It is therefore not clear if the courts can order also the environmental information to be disclosed. In practice, they have done so in some cases.

How can one get access to infringement information on the national level?

Who is managing infringement information (who is in contact with the EC)?

In the Czech Republic, the authority managing the infringement information is the Ministry of Foreign Affairs of the Czech Republic (MoFA).

Is there a list of infringement cases against the country publicly available?

We are not aware of any such list of infringement cases against the Czech Republic which would be publicly available.

How much information can the public get on ongoing infringement cases?

Our experience is that the public is generally denied access to information relating to ongoing infringement cases.

The MoFA refuses the access to information on the grounds of Article 11 para 4 point. b) of the general Act on Free Access to Information No. 106/1999 Coll. which states that access to information relating to judicial decision-making shall be refused.

We do know about two cases several years ago where the Ministry of Environment proactively provided some infringement information (unofficially), however, since then, the official attitude is not to provide infringement information.

How much information can the public get on closed infringement cases?

The same level of information about concrete infringement cases as released and officially published by the European Commission itself is accessible in the Czech Republic. Generally speaking, such official statement covers information on what EU law has been violated and how and what steps have already been realized.

Has there been cases for getting access to infringement information at the court?

As far as we know, there were several cases finished by judgments of the Administrative Court in Prague (e.g. judgment of 13.12.2012, file no. 6Ca 114/2009, judgment of 29.5.2014, file no. 8A 7/2011). All of them confirmed the arguments of the Ministry of Foreign Affairs and denied the applicant access to the infringement information.

Frank Bold filed the lawsuit against one “infringement refusal” of the MoFA to the Administrative Court in Prague in 2015, however, there has been no activity from the court since then. (Administrative Court in Prague is territorially authorized in cases held against the Ministry of Foreign Affairs with its official seat in Prague, hence, all cases against the MoFA are handled by this court.)

What was their outcome?

The Administrative Court in Prague upheld the reasoning provided by the MoFA in all of the cases we are aware of – referring to the protection of the trial and the right to a fair trial as such, including the pre-judicial phase, and the necessary coherence with the European Commission and the CJEU approach. Paragraph 15 of the whereas clauses of the Regulation 1049/2001 has been also mentioned by the court in this respect: “Even though it is neither the object nor the effect of this Regulation to amend national legislation on access to documents, it is nevertheless clear that, by virtue of the principle of loyal cooperation which governs relations between the institutions and the
Member States, Member States should take care not to hamper the proper application of this Regulation and should respect the security rules of the institutions.”

**Conclusion on accessibility of infringement information on the national level**

**What is your conclusion, can one get access to infringement information in your country and if yes, how?**

So far, it has not been generally possible to get access to infringement information in the Czech Republic, however, the practice may be possibly changed by courts. It is possible to file a cassation complaint against the judgment of the Administrative Court in Prague to the Supreme Administrative Court and, in case it is not successful, it is even possible to continue to the Constitutional Court. Hence, it is possible to change this non-transparent practice in the future.

**Contact information**

**Your contact information**

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**Contact information of the body managing infringement cases in your country**

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Hungary

How can one get access to information on the national level?

What law governs ATOI in your country?

Access to information is governed in Hungary by an Act of Parliament No. 112 of 2011 called the Info Act (the de facto FOIA). There are other laws relating to access to environmental information, e.g. the Environmental Protection Act No. 53 of 1995 or the Government Decree No. 311 of 2005 on public access to environmental information but the latter do not add significantly to the body of rules that are prevalent in Hungary regarding freedom of information. The Info Act regulates definitions, deadlines, reasons for refusal of disclosure of information and remedies in addition to costs and oversight of data holders.

Who can claim access to information?

Access to information can be claimed by anyone, be it a natural or a legal person or an organization with no legal personality.

From whom can one claim information?

Access to information can be claimed from those organs that perform a public duty and that possess and manage public interest information.

In what form can one claim information?

The form of request for information can be in fact any i.e. verbal, written or electronic.

How long does the data holder need to answer?

The time within which the data holder must respond is 15 days: the answer either has to grant access to the requested information, or to require a further 15 days for granting access in case the original request related to a significant size or large volume of information, or to refuse the request for information.

In case of refusal of information, what are the available remedies?

In case of refusal of the request, there are basically two remedies available:

- going to court in case of refusal of information against the data holder and require the court to order the data holder for the release of information
- going to the National Data Protection and Freedom of Information Authority that investigates the situation and produces a report on the case (however, the Authority cannot proceed with its investigation in case a court procedure is ongoing)

How can one get access to infringement information on the national level?

Infringement cases against Hungary are managed by the Minister of Justice according to the Government Decree No. 152 of 2014. The Ministry of Justice serves as the contact point towards the European Commission in infringement cases. However, there is no access to infringement case data for the public in Hungary and the public can get no more information about these cases than can be collected from either the media coverage or the official EC press releases and the monthly EC infringement packages. There is no list of either ongoing or closed infringement cases in Hungary, although there is a list of ongoing and finished EU Court cases with the involvement of Hungary but the list has been updated the last time on 31 July 2013 and not ever since. For this reason, currently
the public can get almost no information about ongoing infringement cases against Hungary. The same applies to closed infringement cases, with two exceptions: if the case reached the EU Court then a) it is most likely that it is indicated and detailed on the foregoing list if it was closed before 31 July 2013, or b) it is simply accessible in terms of its outcome on the website of the EU’s Curia website. There has been cases at the court in Hungary initiated for getting access to infringement data but they failed (for details, see the comparative study on problems with access to infringement documents in selected Member States).

**Conclusion on accessibility of infringement information on the national level**

Based on the research of legislation of Hungary as well as the practice of the Ministry of Justice, in addition to the jurisprudence of courts, we are convinced in our conclusion that in Hungary, one cannot get access to infringement information from the national public authorities.

**Contact information**

**Your contact information**

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**Contact information of the body managing infringement cases in your country**

Ministry of Justice of Hungary: [http://www.kormany.hu/hu/igazsagugyi-miniszterium](http://www.kormany.hu/hu/igazsagugyi-miniszterium), [lakossag@im.gov.hu](mailto:lakossag@im.gov.hu), +36 1 7951000
How can one get access to information on the national level

What law governs ATOI in your country?

Right to information is constitutionally protected right (Article 26 of the Slovak Constitution⁷).

In Slovak Republic access to information is regulated under the Act no. 211/2000 Coll. On free access to information (hereinafter “FOIA”).

Mentioned act is the implementation of the constitutionally protected right to information and by mean of this Act also constitutional duty of public authorities to disclose the information on their activity is implemented.

Who can claim access to information?

According to the Section 3 par. 1 of FOIA “Everyone has the right to access the information which the obliged persons have in their disposal”.

Section 4 par.1 stipulates that “An applicant is a natural person or a legal entity requesting access to information”.

It stems from the Constitution and equally from FOIA that everybody has right to information. This means that this right is to be enjoyed by natural and also legal persons. Right to request the information is not neither limited by the residency of the applicant or relation of the applicant to the competent obliged person. The applicant may also be a legal person with its seat abroad.

Competent obliged persons have to provide information without asking the reasons to the applicant. Obliged persons cannot condition the disclosure of the information with a reasoned motivation of the applicant.

This principle is also reflected in other specialized Act no. 17/1992 Coll. on environment where in its Section 14 it is stipulated:

§ 14

Everyone has the right to have true and adequate information on the state and development of the environment, the causes and consequences of this state, information on upcoming activities that could lead to a change in the state of the environment and information on the measures taken by environmental authorities in order to prevent or to remedy environmental damage. A special regulation may provide for cases where information can be restricted or refused.”

From whom can one claim information?

When speaking about persons who have duty to disclose the information, FOIA introduces term of so called obliged persons.

Section 2 Obliged persons

(1)Persons obliged under present act to disclose the information (hereinafter “obliged persons”) are state authorities, municipalities, higher territorial units⁸, as well as the legal and natural persons to whom the law confers the authority to decide on rights and obligations of natural persons or legal


⁸ Slovak denomination for self-governing region (there are 8 self-governing regions in Slovakia)
entities in the field of public administration, and this only to the extent of their decision-making activity.

(2) Obliged persons are also legal entities established by law or legal entities established by a state authority, higher territorial units or by a municipality according to special law.

(3) Obliged persons are also legal entities established by obliged persons mentioned in paragraphs 1 and 2.

(4) Special law may impose the obligation to disclose the information also to other legal or natural persons.

Legal entities established by law (Sec. 2 par. 2) are for instance Social Insurance Agency in Slovakia, Slovak television and radio, Council for broadcasting and retransmission or even public universities etc.

 Provision of Section 2 paragraph 3 refers for instance to state companies or commercial companies pursuant to the Commercial Code.

Paragraph 4 of the Section 2 expresses the fact the FOIA is not the only law that lay down who are the obliged persons to disclose the information.

In what form can one claim information?

Request for information has to comply with some legal requisites which are stipulated in the Section 14 of the FOIA.

Section 14 Request for information

(1) Request may be formulated in written, verbal, fax or electronic form or by in other technically feasible manner.

(2) Request has to clearly stipulate to which obliged person it is addressed, name, surname, or business name of the applicant, its address of residency or its seat, which information is requested and form in which the applicant suggest to disclose it.

How long does the data holder need to answer?

Paragraph 17 regulates time limits in which the obliged persons have to disclose requested information.

§ 17 Time limits to deal with the request

(1) The request for access to the information shall be dealt with by the obliged person without undue delay, no later than within eight working days from the date of filing of the application or from the date of removal of the defects of the application pursuant to Section 14 par. 2 and 3 and within 15 working days if the information is to be disclosed to the blind person in an accessible form pursuant to Section 16 par. 2 letter a), unless otherwise provided in this Act.

(2) For serious reasons, the obliged person may extend the time limit (paragraph 1), but not more than eight working days and 15 working days if the information is to be disclosed to the blind person in an accessible form pursuant to Section 16 par. 2 letter a). The serious reasons are:

a) searching for and collecting the requested information in other location than the seat of the obliged person handling the request,
b) searching for and collecting a greater number of separate or different information requested to be disclosed in one request,

c) demonstrable technical problems associated with the search for and disclosure of information that can be expected to be removed within an extended period of time

(3) The obliged person shall notify the applicant without delay, not later than before the expiry of the time limit (paragraph 1). The notification shall state the reasons which led to the extension of the time limit.

What are the possible answers?

Section 18 stipulates how obliged persons are supposed to deal with the request.

Section 18 Handling with the application and adoption of the decision

(1) If the obliged person provides the requested information to the applicant in the scope and manner according to the Section 16 within the time limit laid down by law, the decision shall be made by a record in the file. Such a decision cannot be appealed.

(2) If the obliged person does not satisfy the request even if only partially, it shall adopt a written decision within the stipulated time limit. The decision shall not be adopted if the request was postponed (Sec. 14 par. 3).

(3) If the obliged person did not provide the information or it did not adopt a decision within the time limit it had for dealing with the request, nor it did not disclose the information, it is to be assumed that it issued a decision by which it refused to provide the information. In such case it is considered that the day of delivery of the decision is the third day after the expiry of the time limit for handling the request (Sec. 17).

Section 18 par 4 regulates the case when the obliged person is a legal entity according to the Section 2 par.3 which was established by obliged persons mentioned in Section 2 paragraphs 1 and 2. If such obliged person does not satisfy even only a part of the request it shall without delay, not later than within three days, request the person who established it or concluded a contract for the performance of the tasks in the field of environmental protection, to deliver a decision in this respect.

FOIA stipulates cases when the access to information may be limited. These limitations are regulated in its provisions Sec. 8 – 13. Information which are excluded from the free access are classified information, bank secrecy, business, information concerning privacy and personal data protection.

Such limitation in the access to information is also stipulated in the Act no. 541/2004 Coll. On peaceful use of atomic energy. In its Section 8 par. 3 the Act stipulates that legal or natural persons which became parties to the permitting proceedings on the basis of the EIA Act may be denied access to sensitive information. This defines sensitive information.

Nevertheless when document contains only some information which cannot be disclosed obliged person cannot refuse to disclose whole document. This would be in contradiction with constitutional principle of proportionality which protects only information that cannot be disclosed.

In case of refusal of information, what are the available remedies?

Possible remedies against refusal to disclose the information are stipulated in the section 19 of the FOIA.
Section 19 Remedies

(1) The appeal against the decision of the obliged person by which it refused to disclose requested information may be filed within 15 days from the day when the decision was served to the applicant or from the moment of the expiry of the time limit for the adoption of the decision pursuant to Section 17. The appeal shall be filed before the obliged person who adopted or was supposed to adopt the decision.

(2) Appeals against the decision of the obliged person shall be decided by the superior of the obligated person, who decided or was supposed to decide in the case. If it concerns the decision of a municipality, the mayor of the municipality shall decide on the appeal. The decision of the central state administration body may be appealed and then it is decided by the head of that central state administration body.

(3) The appeal body shall decide on the appeal within 15 days from the delivery of the appeal by the obliged person. If the appeal body does not decide within this time limit, it is assumed that it issued a decision rejecting the appeal and upheld the contested decision; day after the expiry of the time limit for the decision will be considered as the day when the decision was served to the applicant.

In case when the obliged authority did not decide on the request and did not deliver any decision in this respect it delivered so called fictive decision. In such case there equally exists possibility to present an appeal. Though in this case different time limit will apply.

In case of a fictive decision it is considered that it is served on third day after the legal time limit for answering the information request had expired. The appeal in this case can be presented the day following the day when the decision was served. The time limit for appeal of the fictive decision is different according to the Section 54 par. 3 of the Act on administrative proceedings. According to this provision in case when decision does not contain any instruction for the party to proceeding on the time limits for appeals the time limit is three month from the day when the decision was deemed to be served.

In case when the appeal confirm first instance decision which refused to provide the information applicant may turn to court. The applicant has 2 month time limit from the day he/she received the second instance decision to bring the case to court. In these case is competent to decide Regional Court in the seat of the obliged person.

How can one get access to infringement information on the national level?

Who is managing infringement information (who is in contact with the EC)?

In Slovakia it is the Ministry of Foreign and European Affairs who coordinates the communication with the Commission in any infringement cases. In particular cases competent ministries are further involved and they provide information related to their specific field of competence.

Is there a list of infringement cases against the country publicly available?

Slovak republic does not publish any list of infringement cases which would be regularly updated. It is rather hard to find some comprehensive information in this respect. It is quite scattered. The latest publicly available information is a list of cases from which the most recent are from 2010. Even this list is very brief in its content and does not provide any details on merits of the case.

https://lt.justice.gov.sk/Attachment/Preh%C4%BEad%20konan%C3%AD%20veden%C3%BDch%20pr
How much information can the public get on ongoing infringement cases?

This is practically zero information.

Can the public get information on closed infringement cases?

Slovak Republic does not run any special database in this respect. So even in this case it is hard to access some information. Though according to an employee of the minister they could provide information on closed cases when they are requested. Exception would constitute the cases to which apply article 4 of the Regulation (EC) No 1049/2001.

Has there been cases for getting access to infringement information at the court?

No, we do not have knowledge about such cases. Knowing the position of the Commission in this respect civil associations feel they are in weak position to start some court cases in this field.

What was their outcome?

Conclusion on accessibility of infringement information on the national level

What is your conclusion, can one get access to infringement information in your country and if yes, how?

Access to infringement information in Slovakia is very difficult. This information is not being published in a systematized and updated form by national authorities not even in the phase of closed cases. In relation to open cases the information is practically inexistent even for complainants. List of existing cases can only be accessed on EC web site. Employee of the Ministry in charge of this agenda claim that they do not have problem to provide general information as for instance number of infringement proceedings. In phase of closed cases they may also disclose information on the merit of the cases if the exceptions stipulated in Article 4 of the Regulation (EC) No 1049/2001 do not apply. Given that access to this information is a sensitive issue even on European level Slovak civil associations working in the field of environmental protection feel they are in weak position to bring cases on access to infringement data to courts.

Contact information

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How can one get access to information on the national level?

What law governs ATOI in your country?

Two laws govern access to information in Spain, these are:

1. Law 27/2006, of 18 July, on access to information, public participation and access to justice in Environmental matters\(^\text{10}\), and
2. Law 19/2013, of 9 December, on transparency and access to public information and good governance\(^\text{11}\)

Who can claim access to information?

According to article 3.1.a) of law 27/2006 any natural or legal person have a right to have access to environmental information without having to show any interest regardless of their nationality or domicile. Article 12 of Law 9/2013 establishes the same right of any person to have access to public information; however this right is recognized in principle to Spanish nationals.

From whom can one claim information?

According to Spanish Law information can be requested to any public authority defined in accordance with the Aarhus Convention. Law 19/2013 includes the Crown, the Parliament, and the Constitutional Court, among others in what respects to their activities subject to Administrative Law.

In what form can one claim information?

According to article 11 of Law 27/2006 information can be claim in electronic and paper formats as public authorities must provide the requested information in the requested format. Otherwise, this must be communicated to the applicant within a month, explaining the reasons why the information cannot be provided within the requested format. That decision can be subject to administrative review and to judicial review.

How long does the data holder need to answer?

According to article 11 of Law 26/2006 and 20 of Law 19/2013, the data holder (public authority) has one month to provide the requested information. That deadline can be extended one month further when the public authority needs it because of the volume or complexity of the requested information.

What are the possible answers?

According to article 11 of Law 26/2006 and 20 of Law 19/2013 the public authority can provide all the information requested or only partial information. In addition, it can deny access to information. Law 19/2013 also allows the public authority not to provide an answer within the deadline, in such a case, the access requested is considered as denied by administrative silence.

In case of refusal of information, what are the available remedies?

Spanish Law provides for administrative and judicial review (Article 20 of Law 26/2006 and 20 of Law 19/2013): if the public authority has a hierarchical superior, then the decision must be subject to administrative review, and after can be subject to judicial review. If the public authority has not

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\(^\text{10}\) Available at: [http://noticias.juridicas.com/base_datos/Admin/l27-2006.html](http://noticias.juridicas.com/base_datos/Admin/l27-2006.html)

hierarchical superior, then it can be directly subject to judicial review before an Administrative Court. Law 9/2013 also offers the possibility of filing a claim before the Council on Transparency and Good Governance before filing a judicial review.

**How can one get access to infringement information on the national level?**

In principle any citizen who applies for it according to the Law, however public authorities can apply exceptions to access to information requests.

**Who is managing infringement information (who is in contact with the EC)?**

The DG on Coordination of the Internal Market and EU Policies of the Ministry of Foreign Affairs and Cooperation which has coordinating role jointly with the Technical Secretary General of the Ministry of Agriculture, Fisheries, Food and the Environment

**Is there a list of infringement cases against the country publicly available?**

No, there isn’t.

**How much information can the public get on ongoing infringement cases?**

In this cases, public authorities apply the exceptions on access to information.

**Can the public get on closed infringement cases?**

IIDMA have got access through the European Commission when we filed the complaint. In Spain, IIDMA only tried once in the course of a Justice and Environment project but we never received a response.

**Has there been cases for getting access to infringement information at the court?**

No, as far as we are aware of. IIDMA finds that on pending infringement cases access shall not be granted. However, IIDMA could try with closed cases.

**Contact information**

**Your contact information**

IIDMA


**Contact information of the body managing infringement cases in your country**

Secretaría General Técnica

Ministerio de Agricultura, Pesca Alimentación y Medio Ambiente

Pº Infanta Isabel, 1 - 28014 Madrid
ANNEX

Problem list on access to infringement information from Member States

Austria

- can one get access to the infringement data in your country?

The Austrian Government does not disclose infringement data to the public, neither actively nor does it do so passively upon request.

The parliament has the right to review the management of the Federal Government and to question its members about all objects of completion and to request all relevant information. The information request in written (parliamentary inquiry) and the corresponding answers are then published on the website of the Austrian parliament. In the past only statistical data on infringement cases (numbers, name, assumed infringement) has been obtained by the interested public via this indirect route.

- if not, what is the reason for refusal of access?

Main reason for this is the constitutionally enshrined principle of “official confidentiality” mentioned above: “All functionaries entrusted with federal, provinces and municipal administrative duties as well as the functionaries of other public law corporate bodies are, save as otherwise provided by law, pledged to confidentiality about all facts of which they have obtained knowledge exclusively from their official activity and which have to be kept confidential in the interest of the maintenance of public peace, order and security, of comprehensive national defence, of external relations, in the interest of a public law corporate body, for the preparation of a ruling or in the preponderant interest of the parties involved (official confidentiality).” (Art 20 para 3 Federal Constitutional Law)

The general Duty to Grant Information Acts have to obey this principle and usually refer to it in their texts. E.g. “The organs of the Federation as well as the organs of the self-administration to be regulated by the Federal Legislation shall give information on matters within their scope of activities to the extent not being in contradiction to a statutory duty of secrecy.” (§ 1 Federal Duty to Grant Information Act)

In the J&E case were we argued that infringement data is to be considered environmental information the authority denied that infringement documents can be “environmental information” at all. Furthermore the authority argues that the request may be refused because disclosure of the information would adversely affect the course of justice, the ability of any person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature (Art 4 para 2 c. Environmental Information Directive).

- is that acceptable in the national context?

In our view the refusal to grant access based on environmental information laws is not acceptable.

- does your national public authority contact the EU when receiving a claim to get access to infringement data?

The Federal Chancellery sees that there is no obligation to consult with the EC whenever it receives a claim to get access to infringement data, if it is clear that the document shall or shall not be disclosed (Art 5 Reg 1049/2001). There is margin for discretion in this question for the Member State states the Chancellery.

- is it regulated by law?

No.

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- Has there been tries to get access to such data?
  Yes. See J&E Austria case against Federal Chancellery on Access to Infringement Data related to the environment.\textsuperscript{13}

- Did they fail or succeed?
  It’s an ongoing case.

- If failed was there a remedy?
  Yes, there was a remedy by Justice & Environment Austria and an extraordinary remedy by the Federal Chancellery.

- What did the remedy process produce?
  It’s an ongoing case, next decision by Highest Administrative Court presumably delivered in 2018

- Is there proactive release of infringement data?
  No.

\textsuperscript{13}http://www.justiceandenvironment.org/fileadmin/user_upload/Publications/2016/National_level_access_to_infringement_documents_for_web.pdf
Croatia

- can one get access to the infringement data in your country?
  No.

- if yes, with what conditions?
  N/A

- if not, what is the reason for refusal of access?
  Responsible authority (Ministry of Foreign Affairs) claimed that the requested documents belong to the Commission and only Commission thereto can guarantee access. As regards the response of the national authorities sent to the Commission in the infringement procedure, the Ministry claimed that these fall under the national Freedom of Information Act, and as such, fall under the Proportionality and Public Interest Test. Upon completing, the Proportionality Test Ministry decided that the data holder’s interests prevail, and that by the disclosure of relevant information to the information seeking party ongoing procedure with the EC would be undermined.

- is that acceptable in the national context?
  I believe this is not acceptable since infringement procedures should be a public information so this is violation of Act on the Right of Access to Information (hereinafter: FoIA Act). But Ministry opinion is that such information “does not belong” to Croatian authorities but to EC. In the other had they stated that they conducted test of the public interest so they also see this as an exemption from the rule. Strange.

- does your national public authority contact the EU when receiving a claim to get access to infringement data?
  I do not have this information.

- is it regulated by law?
  No, as I know.

- has there been tries to get access to such data?
  Yes, those cases are described in a separate document. Please, note that there can be more cases but I do not have information about it.

- did they fail or succeed?
  They failed to get information.

- if failed was there a remedy?
  There was a possibility of a remedy (appeal to Information Commissionaire) but it was not used in those cases.

- what did the remedy process produce?
  N/A

- is there proactive release of infringement data?
  No.

- if yes, in what depth and what form?
  N/A

- number of cases or topic of cases or status of cases released?
  N/A

- can one get access to the merits of the case?
  No.
**Czech Republic**

- **Can one get access to the infringement data in your country?**

  Generally, access to the infringement data is denied in the Czech Republic. The Ministry of Foreign Affairs (MoFA) which is responsible for handling requests for information relating to the infringement agenda insists on the opinion that this kind of information may not be released.

- **If yes, with what conditions, if not, what is the reason for refusal of access?**

  The main reasons for refusing the access to the infringement information in the Czech Republic are following.

  The MoFA refuses the access to information on the grounds of Article 11 para 4 point. b) of the general Act on Free Access to Information No. 106/1999 Coll. which states that access to information relating to judicial decision-making shall be refused. In line with the similar interpretation of the European Commission and the CJEU when dealing with requests on the infringement information on the EU level, it states that the correspondence between Member States and the Commission in the infringement procedure represents the “pre-judicial” phase of the process which must be protected in the same way as the judicial phase. The goal is to protect the right to a fair trial as such.

  The MoFA further refers to EC Regulation No. 1049/2001 regarding public access to European Parliament, Council and Commission documents and relevant CJEU case law, stating that it must be applied analogically in any Member State. On the grounds of Article 4 of EC Regulation No. 1049/2001 which states that the institutions shall refuse access to a document where disclosure would undermine the purpose of inspections, investigations and audits, the European Commission generally refuses access to documents relating to running infringement procedures, including the pre-judicial phase, which is more or less being confirmed by the existing case law of the CJEU. According to the MoFA, this approach must be upheld by any Member State. The MoFA states in its refusals that the Czech Republic may not act one-sidedly and deflect from the attitude and interpretation of the European Commission.

- **Is that acceptable in the national context?**

  We do not find this acceptable.

- **Does your national public authority contact the EU when receiving a claim to get access to infringement data?**

  As far as we know, it does not.

- **Is it regulated by law?**

  Providing infringement information shall be governed by the general Act on Free Access to Information (No.106/1999 Coll.), or, in case which can be considered as relating to environmental information, by the special Act on the Right to Environmental Information (No.123/1998 Coll.). In the Czech Republic, there are these two legal acts which implement the right to information.

- **Have there been tries to get access to such data?**

  Yes, there have been several tries to get access to the infringement data.

- **Did they fail or succeed?**

  As far as we know, all of them were unsuccessful. Frank Bold itself has tried to get infringement data from the Ministry of Foreign Affairs.

Frank Bold asked the MoFA for the information relating to the “infringement” communication between the European Commission and the Czech Republic. This infringement communication has concerned poor air quality situation in the Czech Republic and the negligence of the Czech Republic to take effective action to improve it in terms of the obligations set by the EU law (possible breach of Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on Ambient Air Quality and Cleaner Air for Europe). As the MoFA refused to provide the requested information, Frank Bold brought the case before the administrative court (still on-going).
- if failed was there a remedy?
Yes, there was.

In the above mentioned Frank Bold case, the decision of the MoFA was first reviewed by the Minister of Foreign Affairs on the grounds of the appeal submitted by Frank Bold. However, the Minister confirmed the decision of the MoFA and upheld the provided reasoning.

Afterwards, the lawsuit was filed to the Administrative Court in Prague in 2015, however, there has been no activity from the court since then. (Administrative Court in Prague is territorially authorized in cases held against the Ministry of Foreign Affairs with its official seat in Prague, hence, all cases against the MoFA are handled by this court.)

As far as we know, there were several precedent judgments of the Administrative Court in Prague (e.g. judgment of 13.12.2012, file no. 6Ca 114/2009, judgment of 29.5.2014, file no. 8A 7/2011). All of them confirmed the arguments of the MoFA and denied access to the infringement information. We are not aware of any judgment of the Supreme Administrative Court in these matters.

- what did the remedy process produce?
Vide supra. The conclusions of the MoFA have been confirmed by the court.

The Administrative Court in Prague upheld the reasoning provided by the MoFA in all of the cases we are aware of (protection of the right to a fair trial as such, including the pre-judicial phase, coherence with the European Commission and the CJEU approach). Recital 15 of the preamble of Regulation 1049/2001 has been also mentioned by the court: “Even though it is neither the object nor the effect of this Regulation to amend national legislation on access to documents, it is nevertheless clear that, by virtue of the principle of loyal cooperation which governs relations between the institutions and the Member States, Member States should take care not to hamper the proper application of this Regulation and should respect the security rules of the institutions.”

- is there proactive release of infringement data, if yes, in what depth and what form?
No, there is not. We do know about two cases several years ago where the Ministry of Environment proactively provided some infringement information (unofficially), however, since then, the official attitude is not to provide infringement information.

- number of cases or topic of cases or status of cases released?
As far as we know, it is zero.

- can one get access to the merits of the case?
The same level of information about concrete infringement cases as released and officially published by the European Commission itself is accessible in the Czech Republic.
can one get access to the infringement data in your country?

In Hungary, neither the legislation nor the practice ensure free access to infringement data. The access to public interest documents is regulated by the Act No. 112 of 2011 called the Info Act.

- if yes, with what conditions?
- if not, what is the reason for refusal of access?

Requests for access to infringement data are refused routinely based on the exception defined by the Info Act such as:

- is that acceptable in the national context?

In the national context, this is a valid reason for refusal, however, that is used in a broad manner without further explanation of the impacts of possible disclosure.

- does your national public authority contact the EU when receiving a claim to get access to infringement data?

Hungarian public bodies contact EU bodies and institutions in case a request affects data in matters relating to EU bodies or institutions. They do so even in cases where the strict interpretation of the domestic law or the EU Regulation 1049/2001 would not require such consultation with the EU bodies and institutions.

- is it regulated by law?

According to Art. 29.2a of the Info Act, the EU bodies have to be contacted only in case a request for access arrives at a Hungarian public body affecting a document produced by any of the bodies or institutions of the European Union.

- has there been tries to get access to such data?

J&E Hungary has tried to get access to data relating to an ongoing infringement case against Hungary on clean air in 2015 to 2017.

- did they fail or succeed?

J&E Hungary failed to receive the requested data from the competent Ministry of Justice.

- if failed was there a remedy?

J&E Hungary took the case to the competent court.

- what did the remedy process produce?

The first instance court ordered the Ministry of Justice to release the requested data. Upon the appeal of the Ministry, the second instance court dismissed the claim for disclosure and upon the extraordinary remedy by J&E Hungary, the Supreme Court confirmed the judgment of the second instance court, dismissing the claim of J&E Hungary for disclosure of the requested data.

- is there proactive release of infringement data?

There is no proactive release of infringement data. There is a list of ongoing and finished EU Court cases with the involvement of Hungary but the list has been updated the last time on 31 July 2013 and not since.

- if yes, in what depth and what form?

While there is no updated list on the ongoing infringement cases against Hungary, the foregoing compilation of EU Court cases is fairly rich in data, including case numbers, descriptions, a status update and a link to the case files.

- number of cases or topic of cases or status of cases released?

There are no infringement cases released but the foregoing compilation contains all types of cases where Hungary was involved in an ongoing or finished EU Court case. The compilation has 219 pages.
- can one get access to the merits of the case?

Through the link provided in the compilation, one can get full access to the files if released by the respective EU Court.
Slovakia

- can one get access to the infringement data in your country?
- if yes, with what conditions?
- if not, what is the reason for refusal of access?
- is that acceptable in the national context?
- does your national public authority contact the EU when receiving a claim to get access to infringement data?
- is it regulated by law?
- has there been tries to get access to such data?
- did they fail or succeed?
- if failed was there a remedy?
- what did the remedy process produce?
- is there proactive release of infringement data?
- if yes, in what depth and what form?
- number of cases or topic of cases or status of cases released?
- can one get access to the merits of the case?

It is very difficult to access infringement data in Slovakia. While cases are open Ministry of European and Foreign affairs who is the coordinating body in the communication with the Commission refuses to disclose any information related to the concrete cases and the content of the communication with the Commission. If the information requested is of general character- for instance question how many proceedings are currently led against Slovakia, they provide the information. They would also provide information on closed cases if the Article 4 of the Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 does not apply.

Request for information is usually denied in open cases on the basis of the Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 which stipulates that document do not have to be disclosed in case of ongoing investigation.

When the Ministry of Foreign and European Affairs denies to disclose the information the applicant may lodge an appeal against such decision. Appeal is decided by the Minister, head of the Ministry. If the appeal confirms the first instance decision of the Ministry applicant may turn to court. Applicant has a time limit of 2 month from the day when he/she receives the decision to bring the case to court. In these cases against Ministry of European and Foreign Affairs would be competent the Regional Court of Bratislava (so the regional court in which circumscription the obliged person has its seat).

Proactive release of infringement data does not happen regularly in some systemized way and on some easily found place. We are aware of existence of only one document which summarizes Slovak infringement cases. Though this document “Information on pre-judicial phase of infringement proceedings against Slovak republic pursuant to Article 258 and 259 Treaty on the functioning of the European Union” is not very recent and contains cases from 2005-2010 period. This document only contains legal reason of the initiation of the infringement procedure, phase of the proceeding and the competent Ministry that is in charge of the matter. However it does not contain any details on the merits of the case.

In VIA IURIS we do not have knowledge about any cases on access to infringement data and thus it is hard to evaluate the development in this field. Even employee of the ministry in charge of this agenda responded in respect to some question (for instance disclosure of information on closed cases) in a theoretical manner.
Spain

- can one get access to the infringement data in your country?
Not in principle.

- if yes, with what conditions?
Perhaps after the case has been closed and exceptions apply.

- if not, what is the reason for refusal of access?
Matter of international relations, pending case.

- is that acceptable in the national context?
The Court will agree in the application of exceptions in pending cases.

- does your national public authority contact the EU when receiving a claim to get access to infringement data?
We have no information on this.

- is it regulated by law?
No, it isn’t.

- has there been tries to get access to such data?
Just once and we received no answer. It was part of the work for J&E.

- did they fail or succeed?
- if failed was there a remedy
- what did the remedy process produce
See above.

- is there proactive release of infringement data?
Not at all.

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