Hungary
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with contributions from EMLA (Environmental Management and Law Association)

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Free Access to environmental information
Questionnaire for the national reports

Next we shall use the following legal basis in our survey:

FL = Fundamental Law or Constitution of 2011
http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100425.ATV
FOIA = The Freedom of Information Act, the Act No. 112 of 2011
http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100112.TV&celpara=#xcelparam
EPA = The Environmental Protection Act, the Act No. 53 of 1995
http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99500053.TV&celpara=#xcelparam
AC = The Aarhus Convention proclaimed by Act No. 81 of 2001
http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0100081.TV&celpara=#xcelparam
AEI = Government Decree No. 311 of 2005 on Access to Environmental Information
http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0500311.KOR&celpara=#xcelparam

1) *Constitutional frame, constitutionally guaranteed right of access to (environmental) information? Access to information as a fundamental (democratic) right?*

FL in its Art. VI guarantees the protection of personal data and the availability of public interest data. The FOIA guarantees the right to anyone to have access to public interest information upon request. The EPA reaffirms this and ensures this right to everyone. The Aarhus Convention Act contains identical provisions. The words used by the Constitution ("everyone"), by the FOIA ("anyone") and by the EPA ("everyone") guarantee that any applicant for information is treated indiscriminately.

The given Art. VI is part of the chapter on 'Freedom and Responsibility', which is practically the chapter on fundamental rights. The whole Article reads:
»*Article VI*
(1) Every person shall have the right to the protection of his or her private and family life, home, relations and good reputation.
(2) Every person shall have the right to the protection of his or her personal data, and to access and disseminate data of public interest.
(3) The exercise of the right to the protection of personal data and the access to data of public interest shall be supervised by an independent authority.«

Although the judgments of the Constitutional Court before the entering into force of the FL in theory – by an amendment of the FL – are not in force, but may later be reinforced, it is worth to mention that the Court in several judgments interpreted the right to access to public information. For example in its decision 873/B/2008. AB határozat the Court underlined that the access to public information of the previous Constitution, as provided for in Art. 61 (we have to admit that with a much less direct manner than the FL Art. VI), is designed for the transparency of the state. The Court in the given decision and in many others – much earlier ones, as for example the 32/1992. (V. 29.) AB határozat – stated that the openness and access to public information is a fundamental right, prescribed by the Constitution. In one other similar decision - 34/1994. (VI. 24.) AB határozat – the Court even referred to the need to have transparency in excercising public powers, in managing matters of public concern, as

being a fundamental democratice guarantee. This access to information is the basic guarantee of the rule of law.

Of course, the interpretation of this fundamental right has also been touched upon by the Constitutional Court after the entering into force of the FL.

In its judgment 21/2013. (VII. 19.) AB határozat the Court, when comparing personal integrioty rights and public information, interpreted the Art. 6 Par. 2 of the FL. In its interpretation the Court referred to Art. R Par. 3 of the FL ((3) The provisions of the Fundamental Law shall be interpreted in accordance with their purposes, the National Avowal and the achievements of our historical constitution.). The Court also referred to the previous judgments of the same Court in connection with the reference to democratic guarantees of the functioning of the state. Also the Court mentioned the Preamble (National Awoval) of FL, namely the followings: „We hold that democracy is only possible where the State serves its citizens and administers their affairs in an equitable manner, without prejudice or abuse." According to the Court this shall mean the transparency and clear public affairs. The Court stated that public interest information is the core subject of the fundamental right and the openness of public interest information is the main rule. There might be exceptions, as this fundamental right is not an absolute right, might be limited in a proportionate manner – proportinality-necessity test is needed -, safeguarding the content of other fundamental rights. The Court also emphasized that it shall be a basic rule not to require any proof of interest when requesting access to public information, consequently any refusal must carefully be reasoned.

2) *Other (national) legal acts providing access to information held by public authorities. Relationship with laws transposing Dir 2003/98 on re-use of public sector information*

Actually nothing has happened on the basis of this directive up till now. The Government adopted an Operative Program on the Reform of public administration for the period of 2011-13, which has not been implemented yet. Today a new Government Decision - 1289/2015. (V. 5.) Korm. határozat – reinforced the same as a project to be developed under the Ministry of Justice.

3) *National legal situation before Dir 90/313/EC: has the EC/EU legislation had a major impact on the national law on access to information?*

Hungary was neither a member, not the accession agreement had not been signed by the time, when the protection of personal data and the openness of public information had been provided for in the Act LXIII of 1992, which remained in force – with some minor amendments – till the end of 2011, when the FOIA entered into force. As the act could use mostly the same set of provisions as the mentioned directive, it was not necessary to introduce substantail changes. The specific environmental interests have been dealt with by the EPA first, while AEI decree had to be introduced in order to meet all environmental specific requirements of the EC law.

4) *Statistical information about the use of the access-right including types of users if known (eg NGOs, competitive industry, general public, environmental consultants, etc). Difficulties of the administration handling the number and/or the scope of applications.*

No such survey or data is available.

5) *Significant national law and jurisprudence on the definition of "environmental information" (Art. 1 para 1 Dir 2003/4/EC)*

According to Art. 2 of AEI the term, environmental information and its major content are mostly similar to the definition of the Directive – even the sequence of subparagraphs is the same -, while of course the exact wording might be different, but this does not effect the content. There are no other specific laws and we are not aware of any relevant jurisprudence.

6) Significant national law and jurisprudence on determining the access right holder ("without having to state an interest", Art. 3 para 1 Dir 2003/4/EC)

The FOIA does not require stating an interest for a successful request for information, however, it does not even exclude it, simply there is no mention about interests. Looking closely at the working of the act it is clear that there is no reference to the need to state the reasons, or to prove the interest, consequently this may not serve as a basis for refusal. But the Aarhus Convention Act is explicit that no statement of interest can be required for a request for environmental information. Also the EPA is clear in this respect – access to environmental information is a fundamental right, which also means that there shall not be any specific conditions.
The FOIA makes it possible for public authorities to process the personal data of the applicant for information but only to a limited extent. Such personal data can be kept only for satisfying the request for information and for making sure the fee for copying is paid. Once the request is satisfied and the fee is paid, the personal data must be deleted immediately. The Aarhus Convention Act does not contain any different regulation.

7) Significant national law and jurisprudence on the realm and obligations of private persons as defined by Art. 2 No. 2 b and c 4/EC. (see ECJ 279/12 (Fish Legal)

According to Art. 12, Par. 9 of the EPA, the users of environmental resources must also provide the necessary information related to their own environmental load, environmental uses or environmental hazards caused by themselves for any person, who is requesting it. In case of infringing this obligation, the applicant may not turn to court as in cae of access to public information, but may require the supervisory public organ to make the necessary steps. Up till now we may not mention any jurisprudence in this respect, as there no direct and straithforward path to the courts in this case.

8) National law and jurisprudence on the public authorities to be addressed ("information held by or for them") (Art. 3 para 1 Dir 2003/4/EC)

While the FOIA does not contain an exception from free access to public interest information for the legislature and the judiciary, the EPA - in line with the Aarhus Convention Act - states that both the legislature and the judiciary in such quality are exempt from providing information (including environmental information) upon request. This exemption, however, applies to these bodies only if they act in this (legislative or judicial) capacity. Otherwise there are no more restrictions. Again, jurisprudence is missing.

9) Significant national law and jurisprudence on practices on access conditions (terms, "practical arrangements" (see Art.3 paras 3 – 5 Dir 2003/4/EC)

The EPA requires that the bodies having environmental information shall
- inform the public about their access to information rights
- facilitate access to environmental information
- to this end, may appoint a freedom of information officer within the body.

AEI states that the body having environmental information shall publish the list of environmental information possessed by or stored for the body in question.

The Aarhus Convention Act states that each Party to the Convention shall endeavour to ensure that officials and authorities assist and provide guidance to the public in seeking access to information.

The EPA in its Art. 12. Par. 6 requires the public organ who does not possess the requested information to transfer the request to the organ which might have the information and also to inform the applicant about this step, but is it also possibel that the given public organ simply informs the applicant, where he/she might find the requested information. The decision of choice is up to the public organ.

10) *Law and practices/jurisprudence on charges for access (copying? administrative time?)*

The FOIA makes it possible to charge a fee for copying and the related costs. The EPA remains silent on this issue. The Aarhus Convention Act allows the public authorities to charge reasonable fees. Neither access to information, nor access to environmental information is free of charge. When charging fees, the holders of environmental information are not instructed by law to take into account the nature of the applicant for information or the nature of information requested.

As an example from the practice of the National Authority for Data Protection and Freedom of Information we may mention that FOIA does not make a difference between paper or electronic disclosure of data of public interest or data public on grounds of public interest. Only energy consumption costs may arise during the scanning of documents, which the Act's strict interpretation does not allow to be charged. However, it is possible that smaller public bodies do not possess the adequate material to carry out the digitalisation of documents. In this case, the public body in question may have to give the task to a private undertaking that will do the work for a fee. The Act allows to take these costs into account when determining duplication fees. Judicial case law states that market prices can serve as a guide to determine the fee. The Central District Court of Pest, in its decision of 9 May 2012 (case 10.P.87.319./2012/4), fixed the scanning fee for public information disclosure at 9 HUF per page in case of voluminous requests for information.

There are many variations of setting the fee or charge. In a recent research project of mine we applied for the similar information on waste management authorizations and conditions from the environmental authority in connection with a specific aspect of waste management. Of course, there might be differences between the number of cases in the geographical authority of a given environmental inspectorate, still the differences proved to be great. Some authorities sent the whole set of authorizations for free, while others charged for the mandays of experts to collect the information and the time for putting it on a CD. Still we do not believe that there were absolutely unreasonable costs, and also the costs were never extremely burdersome.

11) *Do any public authorities claim copyright in the material supplied, and impose conditions relating to use of information under copyright law (such as due acknowledgement and user fees in case of re-publication)?*

We do not have any cases in this respect.

12) *National law and jurisprudence on the role of affected third parties in access procedures esp. concerning trade secrets and personal data (designation of trade secrets, consultation prior to release of information, etc.)*

According to Art. 12. Par. 5 of the EPA the access to information may not be refused on the basis of reference to personal data, business secret, tax secrecy, habitat of highly protected

species or place of raw materials if the information is related to emissions into the environment. As we do not know of any cases in this respect, I assume that this reference is not in use.

13) *Significant national law and jurisprudence on exceptions (Art. 4 Dir 2003/4/EC)*

More specifically:

a. *Confidentiality of commercial or industrial information*
b. *Confidentiality of the proceedings of public authorities / internal communications /*
c. *Approach to the disclosure of:*
   - *"raw data' (Aarhus Compliance Committee case ACC/53/ Uk – see AC Implementation Guide 2014 p 85)*
   - *"material in the course of completion" vs "unfinished documents" see AC Implementation Guide 2014 p 85*
d. *"Information on emissions into the environment" (Art. 4 para 2 subpara 2 Dir 2003/4/EC, see T-545/11*
e. *International relations, public security, national defence (see T-301/10 Sophie t' Veldt)*
f. *Weighing of interests in every particular case(Art. 4 para 2 subpara 2 Dir 2003/4/EC*

FOIA has to strike a balance between someone's right-to-know and the smooth functioning of government and businesses, all the while defending personal rights to privacy. As such, there are limitations regarding the type of data you can access. Examples of information which is restricted by law includes information thatqualifies as personal data (unless the personal data has been made public by law)

- qualifies as classified information
- qualifies as business secrets (as defined in the civil code)
- qualifies as intellectual property
- has been generated during the course of decision-making (such as meeting minutes and notes). Such data may only be accessed with the permission of the executive of the organization that created the data. This exclusion is valid for 10 years from the time of the generation of the data.

The right to access may also be restricted

- in the interest of national security or defense
- to prosecute or prevent offences
- in the interest of environmental protection or nature preservation
- in the interest of central financial and exchange-rate policy
- in regard to foreign relations and relations with international organisations
- in regard to legal or administrative proceedings.

If the requested document contains a mix of data that can be disclosed as well as data that cannot be disclosed, then the latter will be made unrecognizable in the copy.

However, there are other pieces of subordinate legislation that have relevance and impact on the disclosure of data. This defies the general understanding that the list of exemptions in the FOIA is exhaustive. Subordinate laws that regulate some aspects of secrets (various forms of state, administrative, service and private interests acknowledged by the law) create a legal situation resulting in a confusion between the authentic interpretation of the FOIA and the specific laws used by several administrative bodies. The FOIA does not contain the harm-test, i.e. it does not require that the disclosure should cause harm in order to apply the exception. However, it contains a clause that states that if the refusal of the request for information is

within the discretion of the holder of information, the ground for refusal has to be interpreted narrowly. A request for public interest information can be refused only if the public interest attached to non-disclosure is superior to the public interest of disclosure. It is only the Aarhus Convention Act that specifies that the reasons for non-disclosure can only be applied if the disclosure would adversely affect certain protected interests. It also states that there is pubic interest in the disclosure of environmental information.

While the EPA and the Access to Environmental Information Decree are silent on the matter, the Aarhus Convention Act explicitly spells out that if information can be separated (confidential and non-confidential), the non-confidential part has to be disclosed. This is implicitly written in the FOIA stating that the information not for disclosure has to be made illegible in the copy of a document to be served to the applicant. All state and municipal, etc. bodies are obliged by these provisions, including those holding environmental information.

Although it is only the Aarhus Convention Act that states that the disclosure of (environmental) information serves the public interest, the entire spirit of the FOIA suggests that disclosure of public interest information is in the public interest. The starting point of the FOIA is that all the information in the possession of an administrative body that is not personal shall be qualified as public interest information. The FOIA also contains a public interest test where the holder of information must balance the public interest served by the disclosure and the non-disclosure respectively, and can opt for the latter only if its public interest is superior to the other.

Generally personal data cannot be considered to be of public interest. However, there are some narrow circumstances, precisely defined in the law, when personal *data may be made public on grounds of being in the public interest*. For example, details regarding certain employees acting on behalf of a processor performing a public function may be accessible. As for business data, it may be possible to access information even though it is under the control of a private company, so long as it pertains to the use of public money or involves state budgetary issues, or if the company has a contract with the state or local government.

14) *Judicial control of access-decisions*

a. *Have specialised administrative appeal bodies (information officer etc) been set up? How do they work? Are their opinions respected?*
b. *Court review: "in-camera"-control? Standing of parties affected by decisions denying or granting access?*

The Consitution generally ensures the right of remedies for everyone whose rights and legitimate interests are affected. The FOIA makes it possible for everyone to use two possible ways to challenge the refusal of a request for environmental information: to file a lawsuit at the court against the holder of information, or to initiate an inquiry at the National Data Protection and Freedom of Information Authority. The Aarhus Convention Act regulates alike and ensures judicial control or oversight by another independent and impartial body over refusal of environmental information.

The Consitution generally ensures the right of remedies for everyone whose rights and legitimate interests are affected. Art. VI.3. ensures the independence and impartiality of the data protection authority while Art. 26. contains safeguards that the courts are independent and impartial. The FOIA makes it possible for everyone to use two possible ways to challenge the refusal of a request for environmental information: to file a lawsuit at the court against the holder of information, or to initiate an inquiry at the National Data Protection and Freedom of Information Authority. The Aarhus Convention Act regulates alike and ensures judicial control or oversight by another independent and impartial body over refusal of environmental information.

We may also mention here the Hungarian National Authority for Data Protection and Freedom of Information is responsible for supervising and defending the right to the protection of personal data and to freedom of information in Hungary. Its responsibilities extend to cover both the state and private sectors. The Authority is regulated by the FOIA.

15) How do states fulfill the duty to make information actively available?

The EPA contains only a general entitlement towards public authorities, i.e. that users of the environment (a.k.a. polluters) shall measure, calculate, inventory and inform the competent environmental authorities about their environmental impact. The EPA established the National Environmental Information System that is mandated to monitor, collect and process data relating to the state and use of environment. Subordinate regulations define the specific whereabouts of such data collection and processing, such as air emission information, water discharge information, waste flows, chemical use information and the like. The Aarhus Convention Act also mandates public authorities to possess and update environmental information which is relevant to their functions and that mandatory systems are established so that there is an adequate flow of information to public authorities about proposed and existing activities which may significantly affect the environment. Hungary implements the PRTR laws of the European Union as well.

The EPA does not oblige public authorities but rather obliges operators defined by further laws to monitor the environmental impacts of their activities, to regularly prepare a report thereon and to send such reports to the competent authorities. Subordinate regulations define the specific whereabouts of such data collection and processing, such as air emission information, water discharge information, waste flows, chemical use information and the like. There are certain limit values (in most cases the size of the installation, the volume of production, the volume of outputs and emissions of a facility) under which there is no obligation for the operator to collect and update their records, although its activities may still be potentially affecting the immediate environment.
The Aarhus Convention Act also mandates public authorities to possess and update environmental information which is relevant to their functions and that mandatory systems are established so that there is an adequate flow of information to public authorities about proposed and existing activities which may significantly affect the environment. Hungary implements the PRTR laws of the European Union as well.

The EPA obliges the Government to submit to the Parliament a National Environmental Programme every six years. Every two years, the Government shall submit to the Parliament a report on the implementation of the Programme as well as on the state of the environment. The Access to Environmental Information Decree obliges state bodies to publish electronically or otherwise the state of the environment reports. The Aarhus Convention Act obliges states at regular intervals not exceeding three or four years to publish and disseminate a national report on the state of the environment, including information on the quality of the environment and information on pressures on the environment.

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