

2015-10-23

Case Summary posted by the Task Force on Access to Justice

EUROPEAN UNION, ClientEarth v European Commission, Case C-612/13 P

<i>1. Key issue</i>	Request for environmental information may be refused – The Court found that no full disclosure was called for studies that “had already been placed in a file relating to the pre-litigation stage of infringement proceedings opened with the sending of a letter of formal notice to the Member State concerned” which would otherwise “undermine the protection of the purpose of investigation”.
<i>2. Country/Region</i>	European Union
<i>3. Court/body</i>	Court of Justice of the European Union (CJEU)
<i>4. Date of judgment /decision</i>	2015-07-16
<i>5. Internal reference</i>	<i>CJEU – Second Chamber, C-612/13 P</i>
<i>6. Articles of the Aarhus Convention</i>	Art. 4, para. 4, and art. 9, paras. 1 and 4
<i>7. Key words</i>	Access to information, Access to documents, Investigation, European Union institutions, Grounds for refusal, Protection of the purpose of investigation, Regulation 1049/2001

8. Case summary

The Commission refused access to part of the documents requested by ClientEarth (documents related to studies about the extent to which Member States’ legislation conformed to EU environmental law). The Commission relied on the exception to disclose of article 4(2) of Regulation 1049/2001, claiming that disclosure of the documents would undermine, inter alia, ‘the purpose of investigations’. ClientEarth brought an action before the General Court seeking the annulment of the implied decision. This action was dismissed by the General Court (case T-111/11) and ClientEarth appealed against the General Court’s decision at the CJEU.

The CJEU made a distinction between the studies which “had already been placed in a file relating to the pre-litigation stage of infringement proceedings opened with the sending of a letter of formal notice to the Member State concerned” and the studies where it was uncertain that a pre-litigation proceeding would be initiated and where the Commission had not formally notified the concerned Member State. Concerning the former ones, the CJEU confirmed that the Commission was entitled to apply a general presumption of confidentiality according to which the disclosure of these documents “would have jeopardised the proper progress of that stage and the pursuit, in a climate of mutual trust, of an amicable resolution to the dispute between the Commission and the Member State under investigation (...)”. However, such a general presumption could not prevail with respect to the latter studies: the Commission could not extend the scope of the general presumption of confidentiality by withholding studies where it was uncertain that a pre-litigation proceeding would be initiated. According to the CJEU, “such reasoning is incompatible with the requirement that such a presumption must be interpreted and applied strictly (...) and, more generally, to the principle that the public should have the widest possible access to the documents held by the institutions of the European Union.”

The CJEU concluded that the Commission should have examined and explained, on a case-by-case basis, how a full disclosure of the latter studies to ClientEarth would have “actually and specifically undermined the interest protected by the exception laid down in the third indent of article 4(2) of Regulation No 1049/2001.”

9. *Link to judgement/decision*

<http://curia.europa.eu/juris/liste.jsf?language=en&num=C-612/13%20P>

http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/EUROPEAN_UNION/CJEU_C612_13P_ClientEarth/CJEU_C612-13P_Judgement.pdf

