

Letter of concern

Dear Madam/Sir,

The purpose of this letter is to inform our European partners that numerous provisions of a [bill](#) recently introduced by the Hungarian government would severely restrict access to public interest information.

The proposed law would impose restrictions on freedom of information by enabling state bodies controlling public information, *inter alia*, to charge those requesting information for “the labor input costs associated with completing the information request.” The law would permit such charges if servicing the information request would require “a disproportionate use of the labor resources required to fulfill the basic functions” of the state organ controlling the public interest information.

The planned provisions would make it possible for state organs and state-owned enterprises to demand that citizens requesting information in the public interest pay for the expenses associated with managing and processing the data being requested. This move would empower data controllers to lawfully oblige the refund of their costs of the workload associated with servicing the information request.

The bill would leave it entirely to the data controlling bodies to determine the necessary labor input, and would also give them a free hand in specifying what constitutes a disproportionate use of their labor resources, which would trigger such charge. Citizens, who are hardly aware of the salaries of state organs’ workers, will have no means of checking whether their information request really did cause a disproportionate workload and really did create the cost designated by the data controller. As a consequence, state organs will be able to arbitrarily decide on the reimbursement.

Attempting to further restrict access to public data would add to Hungary’s much criticized track record of freedom of information. On January 2012, the country’s former Data Protection and Freedom of Information Parliamentary Ombudsman’s tasks were transferred to a newly established National Authority for Data Protection and Freedom of Information, which is an administrative body and does not comply with the requirement of full independence, as enshrined in the European Union’s 95/46/EC directive on data protection. In April 2012, the European Commission referred an infringement procedure against Hungary to the Court of Justice of the European Union for failure to correct the early termination of the former data commissioner’s term. On April 8, 2014 the Court of Justice of the European Union ruled¹ that Hungary’s early termination of the former parliamentary data commissioner’s term was a violation of the *acquis communautaire*.

A 2013 amendment to the law on freedom of information prohibited citizens from submitting requests for an “overarching, invoice-based,” or “itemized” audit of the “management of a public authority.”² These restrictions permit state institutions with data management responsibilities excessive latitude to reject requests for public information.³

¹ See case C-288/12.

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=125053&pageIndex=0&doclang=HU&mode=req&dir=&oc c=first&part=1&cid=880384>

² <http://www.publicfinanceinternational.org/news/2013/05/hungarian-ngos-attack-curbs-freedom-information>

³ <http://www.opengovpartnership.org/blog/sandor-lederer/2013/05/02/while-joining-ogp-hungary-weakens-its-foi-legislation>

With the latest attempt to make the payment for costs - the size of which is not available *ex ante* - a prerequisite for servicing public interest information requests, the government proves its determination to administratively hinder the accessibility of public data even further. The government's move runs contrary to the Fundamental Law of Hungary, which, in Article VI, Paragraph (2) defines access to and dissemination of public interest data as a fundamental right. According to Article I, Paragraph (3) of the Hungarian Fundamental Law, this fundamental right "may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of such fundamental right."

The protection of the labor resources of state bodies which control public interest information is not a fundamental right, nor is it a constitutional value with regard to which the restriction of access to public interest information is permissible.

Embedding legal regulations with uncertain content into the Act on Freedom of Information, as well as allowing for an arbitrary interpretation of the law, and thus enabling the restriction of the fundamental right of access to public interest information runs contrary to the concept of free speech as set out in Article 10 of the European Convention on Human Rights and Fundamental Freedoms, to which Hungary is a signatory. Setting new barriers to accessing public data restricts the degree to which this fundamental right can be enjoyed, and therefore would also be in a serious conflict with Article 2 of the Treaty on the European Union, which says, among others, that freedom, democracy, equality, the rule of law and respect for human rights shall prevail in the European Union.

With regard to all of the above, Transparency International Hungary, together with investigative portal Átlátszó.hu, watchdog organization K-Monitor, and public policy institute Energiaklub turned to the Minister of Justice, who had submitted the bill to the Parliament, to withdraw the bill's severely restrictive provisions.⁴ The president of the National Data Protection and Freedom of Information Authority was also petitioned to take a clear stance against the government's attempt to abridge access to public data. Disappointingly, the Hungarian government, instead of adequately responding to the concerns raised by civil society groups, decided to adopt the bill in an extraordinary fast track legislative process.

In our commitment to an unhindered access to public interest information, we kindly ask you to call upon the Hungarian government to refrain from imposing serious restriction on the accessibility of public interest information.

⁴ <http://www.access-info.org/frontpage/17294>