



How to use European Freedom of Information Acts

Wobbing = (verb, Dutch journalist slang) getting documents through Freedom of Information legislation.
Etymology: Wet Openbaarheid van Bestuur

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Council obstructs ruling on transparency

07/02

2014



The Council of the EU has classified its own reaction to a landmark ruling on transparency by the EU-court in Luxembourg. The Court said citizens have a right to know. The Council refuses to disclose how this requirement will be met.

"Effectiveness of legislative decision-making process" is not a valid argument to keep member states positions secret, the Court said. This was the clear-cut judgement by the European Court of Justice 17 October last year, (see under Documents). In the case brought by [Access-Info Europe](#), a Madrid-based NGO, the Court decided that the public in general has a right to

know proposals and arguments held by member states also at an early stage. This right cannot be said to jeopardise the decisions taken in the EU.

The public is capable

The General Court, a lower instance, had earlier formulated this in plain language in its [preliminary ruling](#):

"Public opinion is perfectly capable of understanding that the author of a proposal is likely to amend its content subsequently."

The documents requested by Access-Info dealt with member states positions regarding – of all issues; EU access rules.

When member states discussed a revision of [existing transparency rules](#), citizens were not suppose to know who argued for what amendment. This secrecy on access rules was successfully challenged by Access-Inf.

"This is a significant victory for transparency and participatory democracy," commented Helen Darbishire Executive Director of the organisation after the final ruling.

Second time as farce?

Then what? How has this landmark ruling been received and implemented by the EU-council?

At the time of writing a conclusion comes close to a famous quote by Karl Marx:

"Hegel remarks somewhere that all facts and personages of great importance in world history occur, as it were, twice. He forgot to add: the first time as tragedy, the second as farce."

Whether farce in the end is a justified description might be too early to say. But when this website requested documents presented to, and discussed by, the Council, the very central document looked like in the illustration hereby: All paragraphs of relevance were deleted (for details see under Documents).

Arguments recycled

The General Secretariat of the Council explains in an answer to our request that full disclosure would be *"premature"* and would *"impede the proper conduct of the negotiations and compromise the conclusion of an agreement on this delicate issue."*

These are the very same argument rejected by the Court in the first place, now recycled. How the Court's ruling on transparency will be implemented is kept in the dark with argument already deemed irrelevant by the Court.

Ambassadors informed

We do know for sure that the ruling of the Court was formally reported to the Working Party on Information, a preparing body under the Council of ministers. It was then put on the agenda for a meeting in December with member states' ambassadors in a committee known by its French acronym COREPER, the second highest level in the Council.

No decisions were taken at the meeting.

The redacted document gives no clue to what options were on table, let alone how member states reacted to them.

Reveal or delete

The ruling by the Court gives the Council two basic options. Either adopt new routines where member states' positions are kept in the clear, or delete any references to national positions in the documents.

The latter possibility would be highly impractical for the decision making process in the EU. Negotiations in working parties under the Council can go on for years before the ministers in the Council take a final decision. Conducting these preparatory meetings can easily turn into a nightmare for rotating EU-presidencies if no central records are kept on the outcome of the proceedings.

Who is the top dog?

How the Council, notably the COREPER, will tackle the ruling by the Court is not only an open question in itself. This insecurity gives rise to a number of other questions, like:

How long can the Council postpone an implementation of the Courts decision? What if the Council deliberately tries to circumvent, or neglect the ruling? Who is the real top dog when it comes to the citizens' democratic rights in the EU, the judges in Luxembourg, or the governments of the member states?

Wobbing.eu has filed a so-called confirmatory application (appealed) for access to the whole document we were denied. Such an appeal is formally dealt with at the highest level – The Council of ministers.

If the Council comes to second thoughts on how to tackle the obligations to transparency, followers of this website will be the first to know.

Not really a general rule

Meanwhile we are told by the Council's press service that the Lithuanian presidency informed delegations, that from now on (11 December 2013) requests for access will receive a positive answer. National positions should be available as a general rule, either in the register at first sight, or if specifically asked for.

To a certain extent this seems to be the case. Wobbing.eu did find an open document on the negotiations on new

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Documents

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data protection rules in the register with national positions in clear. On the other hand, as shown above, transparency is far from being the general name of the game.

Finally: Yes Access-Info did get the asked for document on what member states thought of a remake of present access rules back in 2008. Development in this matter has though been non-existing since a [breakdown](#) of the negotiations in June 2012, and is [not likely](#) to occur in a foreseeable future.

Staffan Dahllöf

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Contact

Wobbing Europe
Rozenweg 4b
B-1731 Zellik
Belgium



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