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Member states of the EU ask the Court in Luxembourg for help to hide their positions from the citizens, even after the positions have been leaked and known. The European Parliament has decided to intervene on the other side – to secure the right to know.

Before laws are adopted in the EU member states negotiate on the texts in working parties under the Council of the EU. The public knows the agenda of most working parties, as well as the legislative proposals, which are always prepared by the Commission.

But the positions of member states, such as Germany opposes this, or Italy is in favour to that, are most often kept secret, until the final decisions are made. Sometimes also after.

In 22 March this year a [judgement](#) by the General Court in Luxembourg (formally known as the Court of First Instance) challenged this secrecy.

[Access-Info Europe](#), an information centre and campaign organisation based in Madrid, [won a victory](#) for transparency as the Court agreed that the Council had no right to hold back documents showing the positions of member states.

The judgement said:

"If citizens are to be able to exercise their democratic rights, they must be in a position to follow in detail the decision-making process within the institutions taking part in the legislative procedures and to have access to all relevant information."

The Court also forcefully rejected the often heard argument that revealing positions would hamper the decision making process, as governments would feel bound by their own statements:

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

The Council was not amused at all.

Less than two months after the judgment, the Council [decided to appeal](#) the case to the European Court of Justice (ECJ).

Since then four member states, UK, the Czech republic, Greece and Spain have decided to intervene in the case against Access-Info.

When a country or an institution intervenes it takes sides presenting arguments in favor of one of the parties in a case.

No member state has so far come forward to intervene in favor of Access-Info.

But the European Parliament will, this website has learned.

A political decision to intervene has been taken by a written procedure in the Committee on Legal Affairs ("JUR") and this decision is only to be endorsed by the Conference of presidents (the chairmen of the political groups and the chairman of the Parliament). This is described as a pure formality.

The fact that none of the pro-transparency countries has chosen to intervene in the case might come as a surprise. The content of the appeal gives an explanation.

The Council [argues](#) solely on formal grounds, claiming that the original request by Access-Info was made before the Treaty of Lisbon had come into force. The Council therefore had a right to rely on "general considerations" when rejecting the request.

In other words: The Council might have a weaker case hiding national positions today.

The Council then goes on to say:

"(...) the General Court committed legal errors in so far as it required evidence of an adverse effect on the decision-making process, disregarded the importance of the early stage of the decision-making for appreciating the impact of full disclosure, and failed to take account of the sensitivity of the requested document."

In short: We should not have had to prove that disclosure might harm us, it should be enough that we say so.

There is a particular reason for this argument.

The documents asked for by Access-Info was actually already out in the open. Statewatch, a documentation centre and civil rights watchdog based in London, had [published some of them](#).

"There was already evidence, thanks to the leaking of the documents by Statewatch, that no real harm actually occurred. So of course the Court underappreciated the harm of releasing Member States names in this case", comments Pamela Bartlett Quintanilla researcher and campaigner at Access-Info Europe.

Q: And what was the subject so sensitive that national positions could not be disclosed without having an adverse effect on the decision-making process?

A: Suggestions for [new rules on transparency](#) of EU-documents!

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