

EU Court Supports Disclosing Names of Countries

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23 MARCH 2011

The Council of the European Union was not justified in refusing to disclose the identities of countries taking positions on reform of the European Union's access to information rules, the General Court of the EU has decided.

The Court found that the Council had "in no way demonstrated" how publication of the country names would "seriously undermine its decision-making process."

The [decision](#) (T-233/09) was issued March 22 in a case brought by [Access Info Europe](#). The NGO had sought access to a Council document containing the position of member states concerning amendments to the EU Regulation on public access to documents but the names of the states putting forward amendments – Austria, Greece, Italy, UK and Germany – were censored.

"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," the court said, and they should "have access to all relevant information."

The decision summarized the Council's argument against disclosing the names, saying:

The main reason given is predicated on the claim that disclosure of the information at issue would reduce the delegations' room for manoeuvre to find a compromise, which would have the consequence of undermining the Council's ability to reach an agreement. In order to substantiate that claim, the Council relies on two specific points. The first relates to the preliminary nature of the discussions under way in the Council, while the second relates to the sensitive and tricky nature of the proposals made by the representatives of the Member States. The Council asserts also that disclosure of the information at issue would, as a foreseeable effect, cause written communication to be abandoned in favour of oral communication, which would be detrimental to the overall transparency of the decision-making process.

In addition, the Court summarized:

In general, the Council contends that the identification, at a time when it has not yet taken a decision, of the delegations which put forward proposals for amendment or re-drafting would cause the positions of those delegations to become entrenched, since they would lose some of their ability to modify their positions in the course of discussions and to justify before their public a solution which may differ from their initial position (see paragraph 43 above). In its answer to the first question put by the Court, the Council even alleges that, as a consequence of the disclosure by the organisation Statewatch of the names of the delegations which made the proposals in the requested document, those delegations, or others, which may wish to make proposals for restricting or reducing openness would no longer do so for fear of the pressure likely to be exerted on them by public opinion (see paragraph 49 above). In other words, the pressure which the public could exert would be such that it would no longer be possible for a delegation to the Council to submit a proposal tending towards the restriction of openness.

Court Orders Disclosure

The Court responded, in part:

"Those arguments are not sufficiently substantiated to justify, in themselves, the refusal to disclose the identity of those responsible for the various proposals, who must, in a system based on the principle of democratic legitimacy, be publicly accountable for their actions. In that regard, it should be noted that public access to the entire content of Council documents – including, in the present case, the identity of those who made the various proposals – constitutes the principle, above all in the context of a procedure in which the

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institutions act in a legislative capacity, and the exceptions must be interpreted and applied strictly (see paragraphs 55 to 57 above)."

The Court continued:

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 identification of the Member State delegations which submit proposals at the stage of the initial discussions does not appear liable to prevent those delegations from being able to take those discussions into consideration so as to present new proposals if their initial proposals no longer reflect their positions. By its nature, a proposal is designed to be discussed, whether it be anonymous or not, not to remain unchanged following that discussion if the identity of its author is known. Public opinion is perfectly capable of understanding that the author of a proposal is likely to amend its content subsequently.

"The arguments raised in that regard by the Council are too abstract," the Court later stated, adding, "They are based on the undemonstrated premiss (sic) that public opinion would be hostile to any limitation of the principle of transparency."

The decision continues to rebut arguments made by the Council and several countries who joined the suit.

Access Info on March 21 issued a [report](#) documenting the refusal of governments to disclose their positions on the disclosurepolicy reforms.

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