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European Council decision making lacks transparency

by Pamela Bartlett

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A number of member states, including the UK, are standing in the way of open and accountable governance at the EU level

Despite domestic efforts to open up government, the United Kingdom has taken a stance against transparency in Brussels by being party to a legal battle at the European Court of Justice which, if successful, would limit public access to European Union documents - about future laws and permit greater "policy-laundering". The case - Access Info Europe versus Council of the European Union, Case C-280/11 P - is a dispute over whether or not the public has the right to know what their government is proposing in negotiations between member states and the European Council. The human rights non-governmental organisation Access Info Europe defended the public's right to access this information while the council, backed by the UK and Greece, argued that full publication would harm the decision-making process.

The case was initially settled by the General Court on March 22, 2011. It ruled that "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" and "to have access to all relevant information." But the council has appealed the pro-transparency ruling of the court and is seeking to legitimise the practice of blanking out the names of member states in documents summarising legislative negotiations. Now that the case is being appealed, the Czech Republic and Spain

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have joined Greece and the UK in support of the council.

Although, the information we requested is not actually sensitive - member states appear to be rejecting any advances towards transparency which threaten to open the council's decision-making up to public scrutiny. This is extremely worrying, in a context in which as much as 50 per cent of national legislation originates from Brussels - with the figure rising to 70 per cent in matters of economic policy. This case goes to the heart of the British public's concerns about Brussels being unaccountable and a haven for policy laundering. By staying involved in this case, the UK is, in effect, trying to keep it that way. They need to pull out to reconcile promises at home with actions abroad.

On September 9, 2011, we wrote to the British Prime Minister David Cameron and the Deputy Prime Minister Nick Clegg calling on them to withdraw from the case and to publicly to condemn the council's decision to fight against openness in Brussels. Access Info Europe has noted that the UK's involvement in the case runs directly counter to the clear transparency pledges made by the coalition government when entering office. To date, no response has been received.

The UK campaign is now gathering momentum - with several organisations including the Open Rights Group, the Campaign for Freedom of Information and Unlock Democracy also calling on the British government to withdraw from the case. On a more positive note, the European Parliament has committed to joining Access Info Europe in the case - exercising for the first time its right to intervene in a case before the European Court of Justice.

The UK's involvement in this case is an example of the phenomenon of transparency hypocrisy. In spite of its domestic transparency agenda and at the same time as being a leading member of the newly launched open government partnership, the UK is actively trying to block open decision-making at the EU level. To minimise this transparency hypocrisy, the coalition government should pull out of the appeal and condemn the legal battle against EU transparency. As an international champion of the open government data movement, the UK may also want to follow the EP's lead and intervene in the case - in defence of the public interest in terms of EU transparency.

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