

European Union

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► EU: Governments resist to reveal positions

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EU member states do not take yes for an answer. A fresh pro-transparency court ruling is repeatedly challenged by the Council of ministers.

Yes, the public has a right to know the positions of EU member states before final decisions are made. This was the bottom line in a ruling by the General Court of the EU in 22 March in a case raised by Access-Info, a network and information centre based in Madrid. No, we won't accept that, a majority of governments replies. Less than two months after the pro-transparency ruling the Council of ministers decided to appeal the ruling to the Court of Justice, the highest instance of the EU-courts in Luxembourg. The formal decision was taken at a Council meeting in May 13,

with no member state voting against.

But this seemingly unanimous appeal might be challenged at a later stage, this website has learned. Pro-transparency governments do not object to have the case brought to a final ruling, but have reserved their right so side with Access-Info when the wording of the appeal is known. At the same time the Council has refused to accept the preliminary ruling in at least two ongoing cases of access to documents.

In a case concerning deliberations of a directive for the protection of soil, a "progress report" (see under Documents) regarding the proposal has been made public but with all national positions blanked out. The applicant César Nicolás Cuevas has asked for a full release of the document, referring to the ruling of the Access-Info case.

A majority of member states objects to a full release: *"(...) the Council considers that, on balance, all possible factors which would at the present stage, plead on favour of releasing document 6124/1/10 REV in its entirety are outweighed by the need to protect the Council's decision-making process."* Three member countries had a different opinion when the case was discussed at a working party meeting 20 May: Denmark abstained from voting, as did Finland adding that the Finnish positions on the soil directive may be released. Sweden also accepted to release its own positions, and added: *"Sweden finds that the reply does not sufficiently clarify how the interpretation of Article 4(3) as laid down in case T-233/09 (Access Info Europe v. Council) has been taken into account. Therefore, Sweden cannot agree with the reply."* (For the working party report - see under Documents)

On top of the appeal of the Access-Info case, and the refusal to release a full document on the soil directive a third case (Ronny Patz v. Council) is being discussed along similar lines. It is not yet known whether the Council in the Patz case sticks to an outright refusal, or if the arguments are more developed than in the Cuevas case. Documents concerning the Patz case are not accessible at the time of writing.

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