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David vs Goliath, or the battle for more transparency in the EU decision-making process 01/12/2011

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access to documents and transparency

Without transparency, democracy is impossible. Democracy requires that the decisions are open to public scrutiny and that the public has a right to access such information.

Unfortunately, the European Union can hardly brag about its transparency. The Regulation 1049/2001 on access to the EU documents needs to be changed, but so do attitudes.

The civil liberties committee of European Parliament voted on the public access to documents on the 23rd of November. The committee passed the report through by 33 votes to 17, with two abstentions. EPP Group voted against.

The whole Parliament is about to vote on the report in December. However, EPP would like to postpone the vote, since the Group is not in favour of more access to documents.

One can argue that the position of EPP Group is in contradiction with the Treaty of Lisbon. It has brought the importance of transparency to a new level. The article 10 in the Treaty states that: "Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen".

It is clear that citizens have the right to know how the legislation is made.

Access Info Europe, a tiny NGO based in Madrid, has single-handedly taken on the European Council in a case

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Monday, 05 December 2011

EUROPE'S WORLD - AUTUMN 2011 - #19

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which may seem to be small fry, but which could very well have a huge impact on the future of transparency in the European law-making process.

The NGO is trying to break the Council's practice of blanking out the names of Member States in documents summarizing legislative negotiations, and indeed, the General Court of the European Court of Justice awarded them a resounding victory in its case (T-233/09) against the Council of the European Union in March 2011.

The Council has appealed the decision, and with four Member States having decided to throw their weight on the side of the Council, it looks like this case is making the Council very nervous. The Czech Republic and Spain have announced that they will join Greece and the UK in supporting the Council's fight to keep the names of Member States secret.

In order to redress the balance somewhat, and to defend the public interest in accessing information about EU decision-making, the European Parliament has decided to intervene in the case, in support of Access Info Europe. It will be the first time that the EP exercises its right to intervene in a Court Case before the ECJ on behalf of an applicant in such circumstances.

We believe that it is impossible for European citizens to hold their Member States to account if they cannot make out their positions.

In its pro-transparency ruling dated 22 March 2011, the General Court stated 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."*

The Council, Czech Republic, Greece, Spain and the UK, however, are questioning the General Court's reasoning and are seeking to ensure that such information on future legislation remains secret.

If the appeal against the General Court's ruling is successful, citizens would be prevented from knowing what position their country is taking during negotiations in the Council, a worrying prospect given that as much as 50% of national legislation is now influenced by European Union rules.

But this is not only about citizens, it also extends to national parliamentarians, who should be able to hold their own governments to account. To do this, they too need to be able to see and judge - in full - the activities of their ministers in Council.

There is also the question of trust between the European public and the EU institutions. If the institutions cannot show that they are taking decisions responsibly and in accordance with their mandate, then the public is likely to disengage even more from the European decision-making process.

It is significant that the EP has now taken this essential step to intervene in favour of the democratic "right to

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know", and in defence of the public right to participate in the decision-making process. It is also an important moment for the European Parliament to make common cause with national parliamentarians on behalf of the European citizens that we all represent.

Whilst everyone can respect that legislators need some 'space to think', when clear negotiating positions are being taken, then the public should know.

In democracy the citizens have simply the right to know.

Members of European Parliament Mrs Diana Wallis (UK, ALDE) and Mrs Anneli Jäätteenmäki (FIN, ALDE)

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