

# Legal Battle to Define the Limits of EU Transparency

Submitted on 28 Aug 2011 by

The EU's highest court is being asked to review a decision by the first instance General Court that the Council of the European Union acted illegitimately when it blanked out the names of Member States in documents summarising legislative negotiations, making it impossible for the public to follow and engage in the process.

Ironically, the documents related to the reform of the EU's own transparency rules, enshrined Regulation 1049/2001 regarding access to EU Parliament, Council and Commission documents.

The case, brought by Access Info Europe, dates back to November 2008. Concerned that the negotiations might move towards weakening the public's right to access EU documents, Access Info Europe requested documents that would show which governments were pushing for more transparency, and which were fighting for less.

In response, the Council invoked its most commonly used exception, the need to protect the decision-making process of the EU institutions.

## Reasons for refusal of access to documents, first request

### 2009

- Protection of public security 109 (Numbers) 5.6 (Percentage)
- Protection of international relations 442 (Numbers) 22.9 (Percentage)
- Protection of the decision-making process 757 (Numbers) 39.1 (Percentage)
- Several Reasons together or other reasons 626 (Numbers) 32.4 (Percentage)

### 2010

- Protection of public security 92 (Numbers) 7 (Percentage)
- Protection of international relations 319 (Numbers) 24.3 (Percentage)
- Protection of the decision-making process 434 (Numbers) 33 (Percentage)
- Several Reasons together or other reasons 469 (Numbers) 35.7 (Percentage)

\* This table is a consolidated version of the one featured in the [Council's 2010 annual report](#) on access to documents.

The Council claimed (and still claims) that whilst the information contained in the document was not sensitive in nature, the names of the Member States had to be blanked out in order to protect the *effectiveness of the decision-making process*:

*"If delegations were deprived of the chance of having calm discussions within the Council on sensitive and controversial issues linked to Regulation No 1049/2001, it would make it difficult for the Council to move the revision of the regulation forward."*<sup>1</sup>

Greece and the UK decided to join the initial court case on the side of the Council, and they are still part of the appeal. Other Member States have until mid-October to decide whether or not to take part in the case, and who to support. Access Info Europe is currently campaigning to prevent more Member States joining to fight against transparency.

The outcome of this case will have a knock-on effect on the public's ability to exercise effectively their democratic rights by holding their governments and the EU institutions to account for the

decisions taken in Brussels. Allowing for decisions of this nature to be taken behind closed doors, and not permitting the public to see which country has pushed for what until the decision has already been taken, violates the democratic principles upon which the EU was founded.

To take part in the campaign, please visit:

<http://www.access-info.org/en/european-union/184-stop-fighting-eu-transparency>

*For more information – in English or French - please contact:*

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1 The court case documents are not public, but the General Court's ruling has summarised many of the arguments put forward. This quote comes from the ruling of 22 March 2011, which can be found online at <http://www.access-info.org/en/european-union/165-court-ruling-eu-council-documents>