

From: [xxxx redacted]

Sent: 21 March 2011 18:56

To: [xxxx redacted]

Cc: [xxxx redacted]

Subject: RE: Read-out of WPI meeting on 18 March

[xxxx redacted]

I will let you have comments on the EM and sub separately but in the meantime, I am writing to update you on the status of the dossier, as explained to us at Friday's meeting of the WPI.

The Council Secretariat informed us that the Commission would be bringing forward a new proposal to amend the Access to Docs Regulation simply to make the changes that are necessary post-Lisbon.

The proposal is currently going through the Commission's internal procedures and is expected to be adopted by written procedure today and then transmitted to the EP and Council.

Unfortunately, there was no one from the Commission at the meeting to give more detail, particularly on where that leaves the recast. The Council Secretariat's understanding was that the Commission would not be withdrawing the proposal for the recast. Apparently, the position will be clarified by 1 April.

[xxxx redacted]

From: [xxxx redacted]
Sent: 15 April 2011 16:09
To: [xxxx redacted]
Cc: [xxxx redacted]
Subject: Read-out of meeting of working party on information - 15 April

Here's my read-out of today's discussion in the Working Party on Information which covered two access to documents issues:

- The Commission's recent proposal to update the Access to Documents Regulation to take into account Lisbon Treaty changes.
- The fall-out from the *Access Info Europe* judgment.

New Commission proposal to update the Access to Documents Regulation

- The Commission presented its new proposal to the group.
- The background was that the Commission's proposal for the recast of the Regulation had come out in April 2008. There was no legal obligation on the Commission to bring out that recast proposal; it was a political commitment to the EP.
- However, the proposal had not made any progress since then and there was no sign of any progress on the horizon.
- Given the lack of progress, the Commission considered it necessary to bring forward a separate proposal to update the Regulation simply to take into account the Lisbon Treaty changes i.e. the extension in the scope of the right of access to all EU institutions, bodies, offices and agencies.
- In practice, all the various bodies had already adopted an own-initiative decision to apply the Access to Documents Regulation so there would be no real change.
- The Commission's new proposal had the support of the EU Ombudsman.
- The Commission explained that it was not withdrawing the recast proposal. To do so would send the signal that wider changes to the Regulation were off the agenda and that was not the message it wished to send. The door remained open to discuss the recast proposal; the ball was in the EP's court.
- The Commission accepted that it was unusual for there to be two proposals out at the same time amending the same Regulation.
- Its hope was that the new proposal would be adopted quickly because it just contained necessary, technical changes.
- [xxxx redacted]
- In answer to questions about the drafting of the proposal, the Commission gave the following answers:
 - Referring to a *public* right of access rather than a right of access was not intended as a substantive change.
 - There was a specific reference to the European External Action Service to put beyond doubt that it was included in the right of access. The EEAS was a *sui generis* body and the position might otherwise have been in doubt. Also, public concerns had been expressed that the EEAS would not be included so the wording was intended to reassure people that it was included.

- In terms of timing, the Council Secretariat thought that there would not need to be more than two discussions in the working group before the Council could adopt its position **[xxxx redacted]** - can you ensure that we get swift parliamentary scrutiny clearance?]
- The Regulation (making the Lisbon changes) should be ready for adoption before the summer.

General Court judgment in *Access Info Europe*

- The CLS basically gave the same presentation as they did in Coreper last week and you have that read-out.
- There was some confusion in the group as to what exactly had been decided in that Coreper discussion. Had a decision already been taken to appeal? The CLS clarified that it would still be seeking formal authorisation via Coreper and the Council to lodge the appeal [NB that was our understanding at the time].
- **[xxxx redacted]**
- The CLS said that the Council's approach would be to look at every request on a case-by-case basis and on its merits.
- The Secretariat noted that there would need to be a more detailed discussion of how the Council should handle these kinds of requests pending the outcome of the appeal. There would be further discussions either in this group or in Coreper [NB no timescale was given]. The Secretariat asked delegations to "do their homework" and finalise their positions on this issue **[MoJ]** – are you taking forward a cross-Whitehall consultation on this point?]

[xxxx redacted]

From: [xxxx redacted]

Sent: 23 May 2011 08:45

To: [xxxx redacted]

Cc: [xxxx redacted]

Subject: Read-out of Working Party on Information - Fri 20 May

[xxxx redacted]

The Council Secretariat gave a brief update on the handling of the Commission's recent proposal to amend the Access to Documents Regulation.

Since the last working group meeting, they had had informal exploratory contacts with the Commission and EP with a view to working out the positions of those institutions.

Their aim is to ascertain the best strategy for the Council.

The options are:

1. To deal with the 2011 proposal alone; or
2. To deal with the 2011 proposal and the recast together.

Initial discussions suggested that the Commission was in favour of option and the EP, option 2.

However, the Council Secretariat wanted to continue its discussions to get a more complete picture of where the Commission and EP stand.

They will provide feedback and make practical suggestions at the end of the HU Presidency with a view to the Council taking a decision on how to proceed before the summer.

One of the factors they are taking into account is "the price of non-legislation". If the recast proposal remains stuck in the EP, the Council "remains in the hands of the ECJ's case law". The Secretariat noted that in the recent Coreper discussion on the implications of the *Access Info Europe* judgment, a number of delegations had spoken in favour of enhanced protection in legislation for Council documents. This would only be possible if the recast went ahead.

[xxxx redacted] was keen to start discussing the 2011 proposal in the working group. However, the Council Secretariat thought it was better to wait until it had finished its consultations with the Commission and EP. They also said they were happy for delegations to contact them directly with any comments.

Comment

Despite the impetus of the Commission's recent proposal, this is still not moving very quickly. If you have strong views as to whether to go for option 1 or option 2, we can feed these into the Council Secretariat.

[xxxx redacted]

From: [xxxx redacted]

Sent: 19 July 2011 10:41

To: [xxxx redacted]

Subject: Working Party on Information Readout 15 July

In another full day meeting, the morning session was based around the topic, “Communicating Europe and school education”, whilst the afternoon returned to a more traditional WPI format.

Morning Session

The session began with a presentation [xxxx redacted] introduced the theme by noting that the historical context of Poland makes the provision of information a particularly important matter. Polish efforts at EU communication have been concentrated on promoting active citizenship, and communicating the benefits of EU integration. Young generations in Poland are very interested in EU affairs, and have benefited from the educational opportunities the EU has to offer, with an increasing number of young Poles choosing to study abroad. The Polish curriculum includes teaching on EU issues, and EU studies is a popular new major. There are also many school European clubs, which consist of groups of students who take a special interest in the EU and seek to deepen their knowledge with the help of a dedicated teacher.

In 2002 a programme called “My school in the EU” was initiated, which saw classes, seminars and discussions on the EU held in schools throughout Poland. It also includes an essay competition, the winner of which is rewarded with a study visit to the EU institutions to see how the EU works in practice. This programme was deemed successful and continues to this day.

From Polish experience, communications activities can best achieve their objectives if carried out in partnership with educational institutions. [xxxx redacted] closed noting that the educating in schools on the EU is a task of the utmost importance for the success of the EU project, and invited upcoming Presidencies to continue looking at education as a priority matter.

The Polish Ministry of Education then gave a short presentation detailing how the EU is taught to students. EU topics are taught at every stage of school, and teaching is concentrated on teaching citizenship both at a national and an EU level, explaining the rights and obligations that come with each, as well as examining EU mechanisms and explaining how citizens can affect and influence EU decision making. The ideas of integration and solidarity are also important topics, which see prejudices examined and critiqued. Students also consider Schengen and the single market.

Contributions followed from Italy and Sweden. Italy had, since 2004, been communicating the EU through 'lifelong learning' programmes aimed at integrating the EU in schools, life and experience. This had been undertaken through regional task forces in local departments, raising awareness and understanding of the EU at a local level. Sweden had been teaching about the EU in schools since 1994 through informal partnerships with the Commission, EP and Socrates Agency. This has now been formalised, and since 2009 Sweden has had a Management Partnership Programme concentrating on educating about the EU, which has so far trained more than 1300 teachers in 24 one day seminars and 2 two day conferences. [xxxx redacted]

Estonia also commented that in their experience, teaching on the EU should be value based rather than purely fact based, given especially that the facts can change rather quickly.

The Commission (DG Comm and DG EAC) then gave their view. [xxxx redacted]

Learning Europe at school is a part of civic competency, one of the key competencies framework, and necessary for general knowledge and participation. There is a deficit in MSs on this type of education, and we can see the consequences; in the last EP elections, more than 70% of young people didn't vote. The Lisbon Treaty now makes this kind of participation even more important, and even includes a clause encouraging the participation of young people. The Commission emphasised that this is a MS competence – national curricula can't be defined or dictated at an EU level but is necessarily structured at a national level.

We can also see that education is increasingly important on the political agenda (e.g. EU 2020 framework, 'Youth on the Move' – the MFF also contains an increased allocation for education) – and although the emphasis is currently on skills and competencies for employability, it is also about education for citizenship and personal development.

The Commission will soon be launching a study in all MSs to collect an inventory of methods and best practice for teaching the EU in schools. They are there to support and aid MSs, by providing material and sharing experiences.

We were given an update [xxxx redacted] on the Cion's efforts to updates their educational material and to make it more visible and available to interested parties. Some of the highlights follow:

Teachers Corner and Kids Corner (providing respectively teaching materials and online games/e-learning resources)

E-twinning (the internet twinning of schools which acts as a professional social network to link teachers and schools to cooperate on activities and projects – 100,000 teachers are currently using this resource.)

2 educational packages (one for primary and one for secondary schools) which will be available as from September.

The 'Back to School' initiative – the whole college of commissioners are planning to go back to a school in their region and communicate their experiences of working in the EU – the group will be informed when any dates are fixed for this to explore any possibilities for broader cooperation.

[xxxx redacted] again asked for contact points in MSs to disseminate this material – ([xxxx redacted] Can I put your name forward, or would you like to nominate someone?)

Afternoon Session

The Polish Presidency opened the afternoon session with a short presentation on their communication policy. Polish public opinion was generally very positive for the Presidency and for the EU in general, and at 80% current opinions are higher than they were in 2004.

They had held flower competitions and launched comic books (among other initiatives) in a bid to involve the Polish public in Presidency preparations. They were also using social media and videoblogging.

EU Common Communications Priorities – We were advised that the Council Sec had now received all 27 MS contributions and that a new complete document would soon be circulated to reflect this. The IGI are now consolidating MS and institutional contributions and trying to find a compromise.

Access to Documents

In the WPI 30 June meeting we had agreed to examine the Cion's 2011 proposal to amend Regulation 1049/2001. They reiterated that this was not to prejudice the ongoing proposal for the 2008 recast, but merely to expedite the required technical changes.

The Cion asked MSs for comments on the articles in the proposal [xxxx redacted]

Cashman, the rapporteur in the EP, had been trying to merge the two proposals and take a new report forward by the end of the year, the opposite of what the Cion would like to happen. [xxxx redacted] has been working on trying to influence MPs.

The group were thus in agreement with the Cion's proposal, save the above small amendments, and we will be updated in September at the next WPI on the EP plenary vote (due in week 12-15 Sept), by which time there should also be a clear picture of how the recast will go.

[xxxx redacted]

Access to document requests 18 and 19/c/01/11 were also considered. On both counts the majority agreed with the Council Sec's recommendations.

Ombudsman Own Initiative Enquiry

The Council Sec informed us of a letter from the Ombudsman, challenging the Council's failure to meet the deadlines in the majority of confirmatory applications for documents. They were happy to receive any comments/suggestions from MS on how to reform the process of dealing with these applications and to speed up their response time. They clarified that the WPI can't be bypassed, and one possibility they were considering was holding more regular, informal attaché style meetings to examine conf apps more frequently when needed.

[xxxx redacted]  url <http://ukeu.fco.gov.uk/en/>

From: [xxxx redacted]
Sent: 28 October 2011 13:54
To: [xxxx redacted]
Cc: [xxxx redacted]
Subject: Read-out of working party on information - 27 October

[xxxx redacted]

I set out below my read-out of the “access to documents” items on the agenda of yesterday’s meeting of the working party on information. [xxxx redacted] covered the communication items.

I am copying in [xxxx redacted] who may be interested in **item 6** (potential increase in requests under the Access to Documents Regulation) and [xxxx redacted] who may be interested in **items 4 and 5** (declassification and Croatia).

1. New mailbox

There is a new mailbox for corresponding with the Council Secretariat on access to documents matters:

[xxxx redacted]

2. Reply to Ombudsman

The Council Secretariat has sent the Ombudsman a provisional reply to his complaint that the Council is regularly missing deadlines for responding to confirmatory applications. The Secretariat has indicated that the Council is looking for practical solutions. This will be on the agenda of the next working group.

3. Update on the amendment of Regulation 1049/2001

The **Council Secretariat** reported that, following the publication of Michael Cashman’s report in September, a deadline of 14 October had been set for the LIBE committee to table amendments. The report would be adopted on 7 November. Cashman was aiming for plenary by the end of the year. He was working on the basis of the 2008 proposal, incorporating the 2011 proposal. The JURI committee delivered its opinion on 10 October. Its recommendation was that the 2011 proposal should be incorporated into the 2008 proposal. The AFCD committee, however, was taking a different approach. Its opinion was produced on 19 October. It was working on the basis of the 2011 proposal only [xxxx redacted]. The **Council Secretariat** said that it intended to wait for the vote in LIBE. It would then take stock with the Polish Presidency and the incoming Danish Presidency.

4. *Downgrading classification of Council documents*

The **Council Secretariat** reported that the Council's Security Committee had agreed guidelines for declassifying Council documents [xxxx redacted] queried why the guidelines allowed the Council Secretariat to decide on declassification. The **Council Secretariat** said that standard practice was to consult the relevant working group unless the document originated from the Council and it was "a clear case".

5. *Croatian accession*

The draft Croatian Accession Treaty has been released [NB not clear if in whole or in part][xxxx redacted]

6. *International right to know day*

The Ombudsman had organised the "international right to know" day at the EP on 28 September. At that event, Access Info Europe had launched an "ask the EU" campaign. They have set up a portal which allows citizens to make requests under the Access to Documents Regulation to the institutions. The responses will be published on Access Info Europe's website (including the names of officials but not their contact details). So far, there have been 14 requests, of which one was for the Council. The Council Secretariat noted the potential for more applications and confirmatory applications.

[xxxx redacted]

From: [xxxx redacted]

Sent: 20 January 2012 17:49

To: [xxxx redacted]

Cc: [xxxx redacted]

Subject: 120120 Read-out of today's meeting of the Information Working Group

Summary

- The Presidency presented its plans for taking forward the recast of the Access to Documents Regulation.
- The aim is to reach a second reading deal by the end of June which the Presidency acknowledges is a tall order.

Discussion

- The **Presidency** said that after three years of no progress, the time was ripe to push ahead with the recast of the Access to Documents Regulation.
- The Presidency was well aware that there was a gulf not only between the EP and the Council but also within the Council on this dossier. It therefore proposed a “pragmatic, sensible” approach.
- Rather than using the ambitious EP first reading position as the basis for discussions in the Council, the Presidency would prepare a non-paper incorporating some “easy” changes (such as those required by the Lisbon Treaty and updates to reflect recent case law) along with three “difficult” changes.
- The Presidency was in the process of having bilateral meetings with all Member States to identify what the three difficult topics should be.
- The non-paper would be circulated in the next two weeks and the Presidency would present it at the next working group meeting on 10 February. However, substantive discussions in the working group would not begin until 9 March.
- The Presidency had been in touch with the EP *rapporteur*, Michael Cashman, who seemed amenable to the DK approach but had made no commitments.
- The Presidency recognised that reaching a second reading deal was far from a given but it would give it its best shot.
- The **Council General Secretariat** then clarified its role. It would continue to chair the working group and would provide technical, legal and policy advice to the Presidency. It was

prepared to hold “marathon meetings” to make progress. It stressed the need for clear lines from capitals. The Secretariat also asked Member States to confirm who would be representing them in the working group – Permanent Representation officials or experts from capitals?

- The **Commission** confirmed that it was content with the Presidency’s approach. It was still looking at the EP’s first reading position and would not be ready to present its views on that position until early February.

Comment and next steps

- [xxxx redacted] are coming to this dossier with a fresh outlook and modest aims that might just break the impasse of the last three years.

■ The dynamic in the working group has definitely evolved given a number of changes in government among Member States since this dossier was last seriously discussed by the Council. [xxxx redacted]

- [xxxx redacted]

■ We should step up our contacts with the EP [xxxx redacted]

[xxxx redacted]

From: [xxxx redacted]

Sent: 10 February 2012 11:36

To: [xxxx redacted]

Cc: [xxxx redacted]

Subject: 120210 Read-out of today's meeting of the Working Party on Information

Summary

- The Presidency presents its “pragmatic approach” for taking forward the recast of the Public Access to Documents Regulation after four years on the backburner.
- Negotiations will begin in earnest at the next working group meeting on 9 March.

Detail

- The **Presidency** paraphrased its non-paper which you received on 8 February [xxxx redacted] and which set out 10 ideas for amendments to the Public Access to Documents Regulation.
- Substantive discussion would not begin until 9 March. Further meetings were planned on 27 March, 13 April, 27 April, 11 May and 8 June.
- The **Presidency** had held bilateral meetings with all capitals and judged that there was a widespread commitment to proceed with the recast although there was by no means consensus on what amendments should be made.
- The **Presidency** noted that a number of Member States had changed their positions since the Regulation was last discussed in Council and this provided an opportunity to take a fresh look at the dossier and find common ground.
- The **Presidency** re-iterated its aim of reaching a second reading deal by the end of June.
- The **Presidency** noted that the non-paper had leaked and it had therefore decided to make it public.
- The **Commission** welcomed the Presidency’s approach but had not yet considered the detail. Its views on the EP’s first reading position would be circulated to delegations next week.
- The **Council Secretariat** called on delegations to “activate capitals” so that everyone was prepared for a constructive discussion next month.
- **Belgium** asked whether any additional discussion papers would be circulated prior to the next meeting. The **Presidency** said that the non-paper was intended as the basis for discussion and no further papers would be circulated. **Ireland** asked what timetable the

Presidency had in mind in terms of taking the dossier to Council. The **Presidency** said that it was too early to be specific but they noted that the last Council of their Presidency was the General Affairs Council on 26 June. The **UK** expressed support for the Presidency's pragmatic approach.

[xxxx redacted]

From: [xxxx redacted]

Sent: 09 March 2012 18:43

To: [xxxx redacted]

Cc: [xxxx redacted]

Subject: Read-out of the Working Party on Information - Friday 9 March

Many thanks for coming out for today's working group.

[xxxx redacted] – I thought your interventions were excellent. Very impressive for your first meeting!

Here's a read-out of the conclusions reached.

Today's discussion focused on the Presidency's 10-point non-paper, seeking to find common ground in respect of amendments that might be made to the Public Access to Documents Regulation.

The UK entered a parliamentary scrutiny reserve.

1. Institutional scope

All agreed that the amendments in the Commission's 2011 proposal which were aimed at bringing the Regulation up to date to take into account the Lisbon Treaty should be made.

2. Definition of a document

There were two main schools of thought: those who were satisfied with the current definition of a document and those who thought it could be clarified.

Presidency conclusion: Presidency to propose an updated definition which takes into account technological developments.

3. Exception relating to selection procedure

A number of Member States found the EP's proposal to include an exemption relating to staff selection and public procurement acceptable. Some queried whether the proposed

exemption was really needed as existing exemptions seemed broad enough to cover selection and procurement. [xxxx redacted]

Presidency conclusion: The Presidency concluded that as no one had opposed the new exemption outright, it would come up with some better drafting.

4. Arhus alignment

Again, there was a debate as to whether this change was really necessary or whether it was actually already covered by the Regulation.

Presidency conclusion: The Presidency would come up with some suggested text which could be discussed in more detail at the next meeting.

5. Access for research purposes

There was some concern that this was outside the scope of the recast. A large number of Member States did not support the idea of privileged access for researchers (or any other category of persons) and others queried how the institutions could be sure that the applicant was a *bona fide* researcher. A few Member States thought that the issue could be dealt with without the need for legislation.

Presidency conclusion: Given the strength of opposition, the Presidency would not propose any text and the group would revisit the topic at a later meeting.

6. Information officers

There were few interventions on this point but there was concern that the EP proposal was outside the scope of the recast.

Presidency conclusion: The Presidency said it would propose some text for consideration at the next meeting.

7. Protection of privacy

A number of delegations stressed that the right of access to documents should not undermine the right to privacy. Some thought that the right approach was to seek to codify

the *Bavarian Lager* case law in the Regulation while others thought this was too complicated.

Presidency conclusion: The Presidency would come up with some compromise text and would consider whether there was a need to consult the European Data Protection Supervisor on the way forward.

8. Scope of Regulation and the principle of individual examination of documents

There was broad agreement on what needed to be protected (legal advice, infringement correspondence, Court pleadings, documents in competition cases). Some Member States gave examples from their domestic systems on how to reduce the workload imposed by the Regulation e.g. by having a limit on the number of hours that could be spent on dealing with the request, offering a representative selection of documents when the number requested was huge.

Presidency conclusion: The next meeting would focus on how best to protect these documents e.g. by blanket exemptions, on a case-by-case basis or by the use of general presumptions against disclosure?

9. Member State documents

There was general agreement that the deadline for responding to requests was too short. Not only should the overall deadline be extended but the Regulation should specifically provide for Member States to have 10 days to consider a request that the institutions consulted them on.

Presidency conclusion: The Presidency would propose text to reflect the general agreement.

10. Access to legislative documents

This was the item that caused Member States most concern.

Presidency conclusion: The Presidency would consider whether the amendment that the EP had proposed was outside the scope of the recast. It would also look at what documents were already made public during the legislative procedure. One point to consider further was whether to encourage the institutions outside the Regulation to make more documents public proactively.

The next discussion will take place on 27 March. The Presidency plans to circulate text for discussion in advance.

If I have overlooked anyone who needs to receive this read-out, grateful if you would pass it on.

[xxxx redacted]

From: [xxxx redacted]

Sent: 28 March 2012 19:41

To: [xxxx redacted]

Subject: PROTECT: Read-out of WPI on 27 March

[xxxx redacted]

Here is the read-out from yesterday's meeting:

Discussion focused around the Presidency's paper. The conclusions on each point are set out below.

1. Institutional scope

No comments.

2. Definitions

The Presidency concluded that there was general agreement that the term "document" should have a broad definition. The issue to consider was "when is a document a document?". This would be discussed at the next meeting when the group would also look at where in the Regulation to address the question – as part of the definition of a document or through the exemptions. The question of whether and how to define the term "administrative tasks" would be left for a later date.

3. Selection procedures

The Presidency would work on text for discussion at the next meeting.

4. Århus alignment

There was general agreement that this was a technically difficult change. The Presidency would work on text for discussion at the next meeting.

5. Access for research purposes

This would be set aside for the time being.

6. Information officers

The Presidency considered that this was an important part of a potential agreement with the EP and should be left in despite reservations on the part of the Commission.

7. Protection of privacy and personal integrity

The Presidency would work on text for discussion at the next meeting.

8. Scope of the regulation and the principle of individual examination

The Commission stressed the importance of an exemption that specifically related to documents in competition cases.

Member State views reflected positions from the previous meeting. The Presidency said it would try to find some middle ground, bearing in mind the EP's likely position, and propose some text for discussion at the next meeting.

9. Member State documents

The Presidency said that it would propose some drafting including the case law.

10. Legislative documents

The Presidency would have an informal discussion with the EP and the Commission and revert with a more specific proposal at the next meeting.

11. Miscellaneous

The next meeting would be on 13 April for a full day. In order to reach a second reading deal by the end of June, it would be necessary to go to Coreper in April.

[xxxx redacted]

From: [xxxx redacted]
Sent: 22 June 2012 11:00
To: [xxxx redacted]
Subject: WPI - 20 June

[xxxx redacted]

There was a very brief update on the recast at yesterday's WPI.

I was unable to attend but a colleague covered.

The Council Secretariat had been in discussion with the outgoing Danish Presidency and the incoming Cypriot Presidency and the conclusion was that work should continue on the recast. However, no detail was given as to what the scale of the recast would be.

There will be a more detailed discussion at the first meeting of the group under the Cypriot Presidency (date TBC).

[xxxx redacted]