

THE CHAIRMAN

310901 18.XII.2000

His Excellency Mr Vimont
Permanent Representative of
France to the EU
14 Place de Louvain
Brussels
B-1000

Dear Ambassador

I have been informed of the progress on the proposed Regulation implementing Article 255 of the EC Treaty in the Council Information Working Group and I understand that this issue will be discussed at COREPER level this week. In this context, I am writing to share with you some concerns that I have regarding the procedure and the debate in the Council.

I understand that the Information Working Group has not examined the amendments adopted by the European Parliament on 16th November and that the Working Group is essentially discussing the Commission proposal. The failure to discuss the text adopted by the European Parliament by a very large majority in the three meetings of the Information Working Group since the vote in the Parliament not only means that any position of COREPER must by definition be a preliminary position, but also has the effect of delaying the procedure for the adoption of the Article 255 Regulation. As noted by Mrs Fontaine, President of the European Parliament in her letter of 14th December 2000 to Mr Prodi, President of the Commission, in order to meet the deadline in the Treaty of 1st May 2000, it is essential that the institutions take their responsibilities seriously in this matter.

More specifically, I would like to share some concerns in relation to important elements of the text being discussed by the Council. This text does not appear to respect the fundamental and underlying view of the Parliament that the Regulation to be adopted on the basis of Article 255 will be the law that establishes the principles and limits governing the right of access and that therefore any refusal to grant access must be based on the exceptions defined in the Regulation.

I understand that the current text seeks to reintroduce the so-called "authorship rule" under which the consent of the third party will be required before documents of third parties can be disclosed. The rules concerning access to documents will cover all documents held by the institutions, including documents of Member States, of the other institutions and of third parties, which may vary from non-governmental organisations to NATO. Some differentiation between the treatment of the documents from such different authors may be justified, but consistent with the legislation in most Member States, the institution receiving the request must decide according to the law in force whether or not access will be granted and it cannot be subject to

the goodwill or otherwise of the third party. The introduction of "special rules" for sensitive documents appears to be the "authorship principle" by another name. It should be made clear that any classification of documents must be made by reference to the exceptions in the Article 255 Regulation.

Furthermore, it should be clear that institutions must decide on applications concerning documents of the other institutions and any suggestion that institutions must direct applications for documents from another institution to that other institution could not be accepted. From the Parliament's point of view, this will introduce unnecessary delays and bureaucracy and will not serve the interests of the citizens. As proposed by the Parliament, it is necessary to establish a common framework, through an interinstitutional agreement, for the application of the exceptions in the Article 255 Regulation by the institutions to all documents, sensitive or otherwise and "internal" procedures for cases where an institution disagrees with the classification applied by another institution.

Furthermore, I understand that the text before the Council includes a restrictive definition of the documents concerned (excluding internal documents and preparatory documents) and also introduces an exception that would allow access to be refused where the effectiveness of an institution's decision-making process would be seriously undermined. This is effectively a double exclusion of internal documents and, in the opinion of the Parliament, is both excessive and unnecessary in a modern public administration.

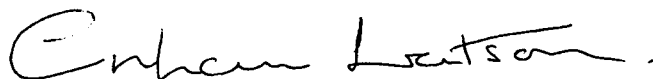
Another negative aspect is the proposal to remove or reduce the ability of Member States to decide on applications from the public concerning documents of the institutions. The proposal of the European Parliament in this respect seeks to avoid conflict through the obligation of loyal cooperation which appears to be sufficient.

Given that the resolution of this matter will shortly become the responsibility of the forthcoming Swedish Presidency, I am copying this letter to Ambassador Lund.

My impression is that in the forthcoming weeks we must find the means to conduct an effective dialogue and reach an agreement on a compromise text. Given the deadline in the Treaty and the nature of the dossier, the objective should be to define a common position of the Council which can be accepted by the Parliament and so avoid the delays involved in a second reading and conciliation. At this stage, I fear that there is a risk of the rejection of the Council common position by the European Parliament which is an outcome I would very much like us to avoid at all costs.

I, as well as the Parliament rapporteurs, remain at your and Ambassador Lund's disposal on this issue.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Graham Watson', with a small flourish at the end.

Mr Graham WATSON

cc: Ambassador Lund