



**COUNCIL OF
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Brussels, 7 May 2012

Mr Tony Bunyan

e-mail:

statewatch-off@geo2.poptel.org.uk

Ref. 12/0644-12/0691-mi/ns

Dear Mr Bunyan,

Your requests of 13 and 19 April 2012 for access to documents DS 1264/12, DS 1270/12 and DS 1276/12 have been registered by the "Access to Documents" unit. Thank you for your interest.

The General Secretariat of the Council has examined your request on the basis of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (Official Journal L 145, 31.5.2001, p. 43) and the specific provisions concerning public access to Council documents set out in Annex II to the Council's Rules of Procedure (Council Decision No 2009/937/EU, Official Journal L 325, 11.12.2009, p. 35) and has come to the following conclusion:

Document DS 1264/12 is a meeting document from the Presidency to delegations and contains a draft compromise text for the recast of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents.

Document DS 1270/12 is a meeting document from the Presidency to delegations with a synoptic overview of the texts related to the recast of Regulation (EC) No 1049/2001.

Document DS 1276/12 is a meeting document from the Presidency to delegations containing an alternative drafting proposal regarding the recast of Regulation (EC) No 1049/2001.

On 7 May 2008, the Commission submitted a proposal to the Parliament and the Council for a recast of Regulation (EC) No 1049/2001 aimed at amending certain provisions of the Regulation, amongst others, to align the provisions of the Regulation with the "Aarhus Regulation" on access to information in environmental matters and of the case law on access to documents.

Moreover, following the entry into force of the Lisbon Treaty on 1 December 2009, it became necessary to bring the Regulation in line with the new Treaty provisions, notably to extend the public right of access to documents of all the Union's institutions, bodies, offices and agencies (Art. 15(3) of TFEU). The Commission therefore submitted a second proposal to that effect to the Council and the European Parliament on 21 March 2011.

The European Parliament adopted its position at first reading at its plenary session on 15 December 2011. This position incorporates the contents of the proposal for the alignment of Regulation (EC) No 1049/2001 with the Lisbon Treaty into the Parliament's report on the initial proposal for a Recast of that Regulation.

In the Council, the Working Party on Information has met several times to discuss both above mentioned Commission proposals. At present, there are still certain sensitive issues to be discussed within the Council's preparatory bodies before the opening of negotiations with the European Parliament.

The requested documents set out drafting suggestions for internal consideration for delegations at the Working Party on Information on a number of issues that may become part of an overall compromise. Disclosure of the documents to the public at this stage would prejudice the Council's capacity to conduct frank and candid internal discussions on certain highly sensitive issues, on which Member States still have divergent positions, and would therefore seriously affect the chances of finding a compromise on the legislative proposals within the Council. In addition, since the negotiations with the European Parliament are yet to take place, disclosure of internal drafting suggestions intended solely to facilitate discussions at the Council's preparatory body would risk having a significant impact on the Council's position in those negotiations.

In the absence of any element suggesting an overriding public interest to warrant disclosure of the documents in question, the General Secretariat has concluded that protection of the decision-making process outweighs the public interest in disclosure. Accordingly, pursuant to Article 4(3), first subparagraph of the Regulation (protection of the institution's decision-making process), the General Secretariat is unable to accede to your request for public access at this stage. Furthermore, as the exception to the principle of transparency applies to the content of the entire documents, the General Secretariat is unable to grant you partial access as provided for in Article 4(6) of the Regulation.

Nevertheless, pursuant to Article 11(6) of Annex II to the Council's Rules of Procedure, these documents and any other legislative document relating to Regulation in question will be made available to the public in full after the final adoption of the act, unless their content is covered by Article 4(1), (2) or (3), second subparagraph, of Regulation (EC) No 1049/2001.

According to Article 7(2) of the Regulation, you may submit a confirmatory application requesting the Council to reconsider this position, within 15 working days of receiving this reply¹.

Yours sincerely,

For the General Secretariat

Jakob Thomsen

¹ Should you decide to do so, then please indicate whether you permit the Council to make your confirmatory application fully public in the Council's Register of documents. If you do not reply or reply in the negative, then your application will be dealt with confidentially. Your reply will in no way prejudice your rights under Regulation (EC) No 1049/2001.