Subject: Your request for access to documents – Ref EASE No 2023/0325

Dear Ms Cann,

We refer to your message dated 17/01/2023 in which you make a request for access to documents, registered under the above-mentioned reference number.

You request access to: a/ any impact assessments on the Mercury Regulation submitted to the Regulatory Scrutiny Board (RSB); b/ all RSB opinions on these impact assessments; and c/ a list and minutes of any upstream meetings held between RSB members and staff in the Commission on this file.

Your application concerns the following documents:

- regarding point a/, we have identified a draft impact assessment submitted to RSB of 15 November 2022 as corresponding to your request (registration number ARES(2022)7871350);

- regarding point b/, we have identified a Regulatory Scrutiny Board’s opinion on the above-mentioned impact assessment of 16 December 2022 as corresponding to your request (registration number ARES(2022)8770545);

- regarding point c/, we have identified the minutes of an upstream meeting of 11 January 2022 as corresponding to your request (registration number ARES(2022)7871350).

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I regret to inform you that your application cannot be granted, as disclosure is prevented by the exception to the right of access laid down in Article 4 of this Regulation.
The documents, which you seek to obtain, relate to a decision which has not yet been taken by the Commission. As a standard practice, the impact assessment and the opinions of the Board will be published along with the proposal when the Commission adopts it.

In this specific case, the Regulatory Scrutiny Board has given recommendations for improving the impact assessment. The impact assessment is still subject to extensive discussions between the Commission services. Releasing the impact assessment, the Board’s opinion, or the minutes of the upstream meeting at this stage would reveal preliminary views and policy options, which are currently under consideration. Disclosing the documents requested might no longer reflect the current thinking and assessment and could lead to unnecessary misunderstandings. As the revision is meant to contribute to the ambitious objectives set under the European Green Deal, the Zero Pollution Action Plan and the EU Chemicals Strategy for Sustainability, it is especially important to have robust underlying evidence for the assessment that will inform the political decision. The issues covered by the revision require thorough analysis for which Commission services need the necessary room for reflection and for internal discussion as they must be free to explore all possible options in preparation of a decision.

Therefore, the exception laid down in Article 4(3) first subparagraph of Regulation (EC) No 1049/2001 applies to this document.

The exceptions laid down in Article 4(2) and 4(3) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. We have examined whether there could be an overriding public interest in disclosure, but we have not been able to identify such an interest.

We have considered whether partial access could be granted to the documents requested. We concluded that giving partial access to the documents would not be meaningful in light of the objectives of the request. Redacting sensitive parts of these documents would leave little substance to the documents requested.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission  
Secretary-General  
Transparency, Document Management & Access to Documents (SG.C.1)  
BERL 7/076  
B-1049 Brussels  
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

James Morrison  
p.o. Rytis Martikonis