



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR JUSTICE AND CONSUMERS

The Director-General

Brussels  
JUST.A.3

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**Subject: Your application for access to documents – 2023/0742**

Dear Ms Verheecke,

We refer to your request for access to documents pursuant to Regulation (EC) No 1049/2001, which was registered on 03 February 2023 under the above-mentioned reference number.

You request access to the following:

- *a list of Inter-service meetings held by the European Commission on the Corporate Sustainability Due Diligence Directive in 2021;*
- *all documents held by the European Commission (including minutes/memos/notes/reports for internal use) and all correspondence (including emails) relating to Inter-Service meetings on the Corporate Sustainability Due Diligence Directive in 2021.*

A list of documents identified to be concerned by your application is to be found in the annex.

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 an exception to the right of access laid down in Article 4 of this Regulation.

Article 4(3), first subparagraph, of Regulation (EC) 1049/2001 provides that “Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.”

Based on the case law of the Court of Justice<sup>1</sup>, an individual assessment was made and established that there is a risk that the Commission's decision-making process (as part of the broader decision-making process of the Union under the ordinary legislation procedure) would be seriously undermined by granting access. In particular, the following factors have been considered: the state of completion of the document in question and the issues still to be discussed, the precise stage of the decision-making process in question at this time and the specific context in which that process takes place. The documents which you seek to obtain relate to internal preparatory exchanges as well as opinions with comments on policy matters from different Commission services involved during the preparation of the adoption of the legislative proposal in question.

Notwithstanding the fact that the Commission adopted, and published, on 23 February 2022, a proposal for a Directive on Corporate Sustainability Due Diligence<sup>2</sup>, alongside with a number of accompanying documents<sup>3</sup>, the decision-making process on the proposal is ongoing. The legislative proposal does not constitute autonomous decision-making ending with adoption by the Commission. It is part of a larger Union decision-making process, which involves the participation of the two branches of the Union legislator (i.e. the European Parliament and the Council), in accordance with the ordinary legislative procedure set out in Article 294 of the Treaty on the Functioning of the European Union (TFEU), in which the Commission has to play its role.

This process is still ongoing, as the legislative act has not yet been adopted by the co-legislators. Already in the preparation stage, the initiative has proven to be complex and sensitive, in particular due to its horizontal character, its close link to the sustainability transition and the high interest generated in the stakeholder community. The particularly high stakeholder interest was, for instance, manifested by the very high number of responses to the preparatory public consultation, and again by the high number of feedback received on the adopted proposal<sup>4</sup>. In this light, and given that the topic has considerable social, economic and political implications, also taking into account that legislation on the topic is emerging in Member States, complex discussions needing to reconcile a large number of different interests are taking place in the legislative procedure. As a result, various substantial amendments to the proposed legislative text can be anticipated, and it is not known at this stage with which exact content the legal act will eventually be adopted by the European Parliament and the Council.

In this highly sensitive and complex process, the possibility for the legislators to refer to preliminary and technical views of individual Commission services at a certain point in time in the institution's internal preparation bears a risk of seriously endangering the Union decision-making process, in particular by undermining the Commission's position in that process, which is a collegial one supporting the proposal as adopted by the College of Commissioners and helping to find a compromise between the two branches of the Union legislator, if necessary. Again, given the described particular context, the disclosure of the requested documents also bears the risk of seriously endangering the Commission's internal decision-making process. This would be the case by exerting pressure on the Commission's decision-making accompanying the legislative procedure, linked to the

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<sup>1</sup> Judgement of the Court of Justice of 4 September 2018, C-57/16 P, *ClientEarth v. Commission*

<sup>2</sup> [COM\(2022\)71](#).

<sup>3</sup> Opinion of the Regulatory Scrutiny Board ([SEC\(2022\)95](#)), Commission Staff Working Document "Subsidiarity Grid" ([SWD\(2022\)38](#)), Follow-up to the second opinion of the Regulatory Scrutiny Board (SWD(2022)39), Impact Assessment Report ([SWD\(2022\)42](#)), Executive Summary of the Impact Assessment Report ([SWD\(2022\)43](#)).

<sup>4</sup> Both available on the Commission's [Have your say](#) web portal.

Commission's role within the ordinary legislative procedure under the TFEU and overall its right of initiative (Article 17(2) Treaty on European Union).

As regards information on interests relevant to the proposal, throughout the preparation of the legislative initiative and after the adoption of the proposal, the Commission carried out - in line with its Better Regulation Guidelines - comprehensive consultative activities, lastly by collecting feedback on the proposal as referred to above. That feedback is publicly available and at the legislators' and stakeholders' disposal<sup>5</sup>.

Consequently, considering the state of completion of the document in question and the issues still to be discussed, the stage of the decision making process and its specific context, the disclosure of the requested documents at this stage of the Union's decision-making process would seriously undermine that process.

Therefore, the exception laid down in Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001 apply to these documents.

We have considered whether partial access could be granted to the documents requested in accordance with Article 4(6) of Regulation 1049/2001. However, I regret to inform you that no meaningful partial access is possible without undermining the interest described above.

The exceptions to the right of access provided for in Article 4(3) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the requested documents. In your application, you did not submit any grounds concerning a public interest on the basis of which the interests protected in Regulation (EC) No 1049/2001 would have to be overridden, and we could not identify any such ground either. In these circumstances, we have to conclude that there is no evidence of an overriding public interest in disclosure, in the sense of Regulation (EC) No 1049/2001.

In accordance with Article 7(2) of Regulation (EC) No 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  
Secretariat-General  
Transparency, Document Management & Access to Documents (SG.C.1)  
BERL 7/076  
B-1049 Bruxelles  
or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

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<sup>5</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance/feedback\\_en?p\\_id=29288521](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance/feedback_en?p_id=29288521)

This reply is sent to you via email only and we would appreciate if you could confirm its receipt by replying to [JUST-A3@ec.europa.eu](mailto:JUST-A3@ec.europa.eu).

Yours faithfully,

*Electronically signed*

Ana GALLEGO

Enclosure: Annex I: The list of concerned documents:

Annex I: The list of concerned documents:

<b>Ares reference</b>	<b>Document title</b>	<b>Document date</b>
<a href="#">Ares(2022)5809797</a>	3rd ISSG meeting on Sustainable Corporate Governance - invitation + the attachments:  * IA Data mapping; * Impact assessment - draft; * intervention logic - draft	29-01-2021
<a href="#">Ares(2021)1123320</a>	3rd ISSG meeting on Sustainable Corporate Governance - minutes	09-02-2021
<a href="#">Ares(2022)5810146</a>	4th meeting of the Interservice Group on the initiative ‘Sustainable Corporate Governance’ - invitation + the attachments:  * Annex II: Stakeholder consultation; * Impact assessment - draft	11-03-2021
<a href="#">Ares(2021)1957801</a>	4th meeting of the Interservice Group on the initiative ‘Sustainable Corporate Governance’ - minutes	18-03-2021