



EUROPEAN COMMISSION

Regulatory Scrutiny Board
Chair

Brussels,

***By registered email / By registered letter with
acknowledgement of receipt***

Ms Myriam Douo

Email: ask+request-3617-9bcbfc6@asktheeu.org

Subject: Your request under Regulation (EC) No 1049/2001¹ regarding public access to European Parliament, Council and Commission documents – Ref GESTDEM/2016/7053

Dear Ms Douo,

We refer to your e-mail dated 14/12/2016 in which you make a request for access to documents, registered on 15/12/2016 under the above mentioned reference number.

You requested access to *any document related to:*

- *the opinion of the Regulatory Scrutiny Board Revision of directive 2009/28/EC on the promotion of the use of energy from renewable sources of 15 September 2016.*

- *the opinion of the Regulatory Scrutiny Board Revision of directive 2009/28/EC on the promotion of the use of energy from renewable sources of 17 October 2016.*

You mentioned that *this should include minutes of the Regulatory Scrutiny Board meetings, participants' lists, agendas and any relevant document.*

As regards the documents falling under the scope of your request, the RSB delivered opinions on two successive versions of a draft impact assessment report, which were communicated to the relevant Commission services and Cabinets, and made public on the RSB website in parallel with the final version of the impact assessment and the related Commission proposal for a Directive of the European Parliament and of the Council on the promotion of the use of energy from renewable sources (recast)². Section 3.4 of the Explanatory Memorandum of the Commission's proposal and Annex 1 of the associated final impact assessment indicate clearly what changes were introduced by the Commission as a result of the opinions expressed by the RSB. A mid-term evaluation report of the

¹ OJ L145, 31.05.2001, page 43.

² http://ec.europa.eu/smart-regulation/impact/ia_carried_out/cia_2016_en.htm#ener

Renewables Energy Directive and a number of associated studies will soon also be available on the website of DG Energy³.

As regards other documents falling under the scope of your request, please note the following:

1. Concerning the successive versions of the draft impact assessments, submitted by DG Energy to the RSB and related internal exchanges between Commission services, the Commission has been refusing access to such internal documents drawn up for the preparation of legislative proposals, at least as long as the legislative decision-making process to which the report relates is still on-going (i.e. until the policy initiative has been either adopted or abandoned). The Commission considers that such documents need to be protected until the proposal is adopted by the Union legislature and our practice is to refuse access to draft impact assessments also while the inter-institutional decision-making process is pending. Such refusals are based on the exceptions laid down in Article 4(3) of Regulation 1049/2001 relating to the protection of the institution's decision-making process. The General Court has recognised a general presumption⁴ of non-disclosure to documents drawn up in the context of preparing an impact assessment, as such disclosure would, in principle, seriously undermine the Commission's decision-making process for developing a policy proposal (regardless of the nature of such a proposal – legislative or otherwise).
2. For the same reasons, other documents related to RSB deliberations and internal exchanges with DG Energy, containing opinions for internal use as part of preliminary consultations and advice to the Commission, cannot be disclosed without undermining the Commission's decision-making process, the collegiality of the deliberations of the Board and its capacity to advise the Commission independently.
3. The above-mentioned exceptions laid down in Article 4(3) of Regulation 1049/2001 must be waived if there is an overriding public interest in disclosure. In your request you do not refer to any such overriding public interest and we are of the view that the documents published by the Commission with regards to the opinions of the RSB and the way they have been taken into account in the final version of the impact assessment and the related Commission proposal on the recast of the Renewables Directive, provide all the necessary information to the public.

Against this background, the RSB is not in a position to disclose internal documents related to its deliberations other than those already or shortly to be published.

However, please note that 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:

³https://ec.europa.eu/energy/sites/ener/files/documents/CE_Delft_3D59_Mid_term_evaluation_of_The_RED_DEF.PDF

https://ec.europa.eu/energy/sites/ener/files/documents/2_en_autre_document_travail_service_part1_v2_416.pdf

⁴ For example, see Judgment of the General Court of 13 November 2015 in joined cases T-424/14 and T-425/14, ClientEarth v Commission

European Commission
Secretary-General
Transparency unit SG-B-4
BERL 5/282
B-1049 Bruxelles

or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

Anne BUCHER /signed electronically/

Chair of the Regulatory Scrutiny Board