



EUROPEAN COMMISSION

Regulatory Scrutiny Board  
The Chair

Brussels  
SG.A.2/FL

**Subject: Your request under Regulation (EC) No 1049/2001<sup>1</sup> regarding public access to European Parliament, Council and Commission documents– Ref GestDem 2021/8073**

Dear Mr Haar,

We refer to your message dated 09/12/2021 in which you make a request for access to documents, registered under the above-mentioned reference number.

You have requested the following documents:

1. The two opinions [on the draft impact assessment] on the Sustainable Corporate Governance Framework made by the Regulatory Scrutiny Board (RSB),
2. all communication with external experts that concern the two decisions,
3. any report or other texts used by the Regulatory Scrutiny Board from sources external to the Commission in the course of the proceedings on the two decisions,
4. and the internal document which describes under what circumstances an opinion of the Regulatory Scrutiny Board can be made public.

#### Item 1

Concerning the requested opinions of the Board, 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 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, these documents will be published along with the final proposal if and when the Commission decides to adopt it. In this specific case, the Regulatory Scrutiny Board has given recommendations for a significant redrafting of the impact assessment. The latter is therefore still subject to extensive discussions between the Commission services. Releasing the Regulatory Scrutiny Board opinions on this impact assessment at this stage would reflect preliminary views and policy options currently under discussion and development. Services in the Commission

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<sup>1</sup> OJ L145, 31.05.2001, page 43.

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are working on the file to address the concerns exposed by the Board and they must be free to explore all possible options in preparation of a decision free from external pressure. 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 also 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 nature of the documents. Redacting sensitive parts of these documents would leave little substance to the documents requested.

### Item 2

Regarding communication with external experts, as specified in Article 2(3) of Regulation (EC) No 1049/2001, the right of access as defined in that Regulation applies only to existing documents in the possession of the institution. Given that no such documents, corresponding to the description given in your application, are held by the Commission, the Commission is not in a position to fulfil your request. Indeed, the Board has not consulted external experts on this topic.

### Item 3

Regarding reports used by the Board, two external studies carried out for the Commission have been made available to the Board when the draft impact assessment was submitted for scrutiny:

- a study on directors' duties and sustainable corporate governance (publicly available at this link: <https://op.europa.eu/en/publication-detail/-/publication/e47928a2-d20b-11ea-adf7-01aa75ed71a1/language-en>);
- a study on due diligence requirements through the supply chain (publicly available at this link: <https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>).

### Item 4

Regarding an internal document, which describes how the opinions of the Board are made public, I refer to the rules of procedure of the Board, and in particular Article 11 thereof: [https://ec.europa.eu/info/sites/default/files/rsb\\_rules\\_of\\_procedures\\_-\\_revision\\_2020\\_en.pdf](https://ec.europa.eu/info/sites/default/files/rsb_rules_of_procedures_-_revision_2020_en.pdf)

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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](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,

Veronica Gaffey