Dear Ms Roger,

Subject: Your application for access to documents: Ref EASE No 2022/5960

We refer to your request for access to documents dated 19/10/2022, registered under the above-mentioned reference number and our holding reply Ares(2022)7771197 – 09/11/2022. We would like to sincerely apologise for the delay in our reply.

You requested access to the following:

“...documents prepared in the context of the legislative initiative regarding REACH (This initiative is mentioned and described at: https://ec.europa.eu/environment/chemicals/reach/reach_revision_chemical_strategy_en.htm).

The documents requested consist of:

a) any impact assessment report(s) whether in draft form or already finalized; and

b) any opinion(s) by the Regulatory Scrutiny Board (RSB) on the impact assessment report(s), as soon as issued

We urge you to take due account of the judgment of the Court of Justice of the European Union of 4 September 2018 in Case C-57/16 P (https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62016CJ0057) , in which the Court held that documents drawn up in the context of an impact assessment procedure for a legislative proposal constitute legislative documents that should be made directly accessible to the public pursuant to Article 12(2) of Regulation No 1049/2001 and that access should not be denied on request (see paragraphs 84-95).

We note that the Commission’s Better Regulation Guidelines state that “[t]he purpose of evaluations, namely to promote inputs to decision-making, organisational learning, accountability/transparency and efficient resource allocation, can only be achieved if the resultant information reaches all interested parties.” (Tool #50 on Disseminating the evaluation findings). It is in the spirit of these objectives that we make this request to the Commission.
Finally, we request that the document/information falling within the scope of this request to be made publicly available on the Commission’s documents register, in accordance with Articles 11 and 12 of Regulation 1049/2001 and Article 4 of Regulation 1367/2001.

I consider your request to cover documents held up to the date of your application, i.e. 19/10/2022, therefore the following documents have been identified to fall in the scope of the request:


Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that these documents may be partially disclosed. Some parts of the documents have been blanked out as their disclosure is prevented by the exception to the right of access laid down in Article 4(3) first subparagraph of this Regulation.

More specifically, the redacted parts of both documents contain:

- analyses of the economic, social, including human health and environmental impacts of the various policy options envisaged for the proposal for the revision of the REACH Regulation, including an overview of the benefits and costs

- a detailed comparison between the identified policy options on this basis

- analyses of the preferred options/sub-options to be included in the proposal for the revision of the REACH Regulation, on the basis of the preceding discussion of the impacts and of their comparison

Based on the case law of the Court of Justice (1), and since these documents relate to a decision that has not yet been taken by the Commission, an individual assessment of the requested documents was made and it was established that there is a risk that the Commission’s decision-making process would be seriously undermined, if the redacted parts were disclosed. Such a risk is due to the following factors: the state of completion of the documents in question; the precise stage of the decision-making process in question.

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(1) Judgment of the Court of Justice of 4 September 2018, C-57/16 P, ClientEarth v. Commission
at the time of this request; the specific context in which that process takes place; and the issues still to be discussed internally.

In particular, the discussion of the impacts of the policy options, of their comparison, as well as of the preferred options, which is made in the requested documents, is still in a draft form. At the present stage, some elements of the impact assessment and its annexes are still under consideration. The requirements under Better Regulation as well as internal considerations and discussions with other services could still lead to various substantial amendments. If released now, the content of the redacted parts could give rise to unnecessary misunderstandings.

The draft impact assessment and its Annexes are aimed to inform a decision which the College of Commissioners is expected to take in the future. The documents will be published in their entirety in their final version, in line with well-established practices, as soon as the College of Commissioners will have adopted the relevant legislative proposal.

Considering the specific context in which this decision-making process takes place, the revision of REACH contributes to deliver on the ambitious objectives set under the European Green Deal, which aims to transform the EU into a fair, clean and climate-neutral, resource-efficient and competitive economy. Achieving such objectives requires strong evidence, clarity of solutions and political determination. Most of the issues covered by this revision are of a wide-ranging nature and require further analysis by Commission services. The content of the impact assessment is intrinsically linked to such issues that the College of Commissioners must still decide upon.

Consequently, considering the state of completion of the documents in question, the stage of the decision-making process and its specific context, as well as the issues still to be discussed internally, the disclosure of the above-mentioned redacted parts of the requested documents would seriously undermine the preparation of the proposal for the revision of the REACH Regulation and the Commission decision-making process.

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

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

In our view, even if there were a public interest in making the full content of the documents public, it does not outweigh the harm which a possible disclosure of the undisclosed parts would cause.

Against this background, we consider that, in this case, for the redacted parts of the two documents, the public interest is better served by protecting the ongoing decision-making process, in accordance with Article 4(3), first subparagraph of Regulation 1049/2001, and by securing the swift publication of the full content of the documents as soon as the College of Commissioners will have decided on the matter.

Please also note that the disclosed documents are preliminary drafts, which not reflect the position of the Commission and cannot be quoted as such.

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 to the Secretariat-General of the Commission within 15 working days upon receipt of this letter. You can submit it in one of the following ways:

**by asking for a review via your portal account** (available only for initial requests submitted via the portal account),

**or by mail:**
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)

Yours faithfully,

*e-signed*

Florika FINK-HOOIJER  
Director-General

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