



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE and CONSUMERS

The Director-General

Brussels,
JUST.A3/MS/cp Ares(2022)

Ms Vicky Cann - CEO
Rue d'Edimbourg 26
BE - 1050 Brussels

Sent by email:

ask+request-10369-033f0ac4@asktheeu.org

Subject: Your application for access to documents – GESTDEM 2021/8092

Dear Ms Cann,

We refer to your e-mail of 10/12/2021 in which you transmit a request for access to documents, registered on 14/12/2021, under the above mentioned reference number.

You request access to: “Documents prepared in the context of the legislative initiative regarding Sustainable corporate governance:

- a) all impact assessments submitted to the Regulatory Scrutiny Board for the Sustainable Corporate Governance Directive;
- b) all draft impact assessments for the Sustainable Corporate Governance Directive which have been discussed with DG Grow, the Secretariat General, and/ or other parts of the Commission”

Your application concerns the following documents:

1. Commission Staff Working document - Draft impact assessment: Sustainable corporate governance (Ares(2021)2442904 of 09/04/2021)
2. Commission Staff Working document - Draft impact assessment: Sustainable corporate governance (Ares(2021)6821813 of 05/11/2021)

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.

Based on the case law of the Court of Justice¹, an individual assessment was made and established that there is a risk that the Commission’s decision-making process would be seriously undermined. Such a risk is due to the following factors: the precise stage of the decision-making process in question at this time; the specific context in which that process takes place; and the issues still to be discussed internally.

The documents requested are used to inform on the Commission’s draft legislative proposal on sustainable corporate governance. As such, they relate to a decision, which has not yet been taken by the Commission.

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

At the present stage, some fundamental elements of the impact assessment are still under consideration. The draft impact assessments in question are therefore an internal draft, with Better Regulation requirements and internal considerations still leading to various substantial amendments.

Throughout different stages of the decision-making process, and in line with its Better Regulation Guidelines, the Commission made already public information regarding the main components of the forthcoming legislative initiative through the appropriate established channels, as part of its obligatory consultative activities (e.g. inception impact assessment, open public consultations, targeted consultations, etc.).

Consequently, considering the stage of the decision making process and its specific context, and the issues still to be discussed internally, the disclosure of the requested documents at this moment would seriously undermine the file preparation 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 this document.

The exception laid down in Article 4(3) of Regulation (EC) No 1049/2001 applies unless there is an overriding public interest in disclosure of the document. However, you did not invoke and we have not been able to identify such an interest. Moreover, access to different versions of draft impact assessment reports and subsequent amendments thereto could spread confusion among the addressees of those documents.

In accordance with Article 4(6) of Regulation No 1049/2001, I have considered the possibility of granting partial access to the documents requested. However, I regret to inform you that no meaningful partial access is possible without undermining the interest described above, nor the integrity of the whole document.

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

According to standard operational procedure, the reply is usually also sent to you by registered post. Please note, however, that due to the extraordinary health and security measures currently in force during to the COVID-19 epidemics, which include the requirement for all Commission non-critical staff to telework, we are unfortunately not in a position to follow this procedure until further notice.

We would therefore appreciate if you could confirm receipt of the present e-mail by replying to: JUST-A3@ec.europa.eu

Yours sincerely,

(e-signed)
Ana GALLEGO