



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
ENVIRONMENT

The Director-General

Brussels,
ENV/FFH

Mr Marius MUNSTERMANN
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Subject: Your application for access to documents EASE 2023/4754

Dear Sir,

We refer to your request for access to European Commission documents sent on 08/08/2023 and registered on 09/08/2023 under the case number 2023/4754 as well as to our letter extending the deadline for replying to your request.

You request access to documents refer to the following information:

- *the Proposal for a Directive on protecting, sustainably managing and restoring EU soils - Soil Health Law, including annexes (Reference Number PLAN/2021/13172, as submitted to the Regulatory Scrutiny Board on 18 January 2023)*
- *any prior versions of the above mentioned proposal, including annexes*

First of all, we would like to clarify that the submission to the Regulatory Scrutiny Board on 18 January 2023 did not contain any draft of the proposal for a Directive (Reference Number PLAN/2021/13172).

Regarding the versions of the proposal ahead of its adoption by the Commission, the following documents have been identified in the Commission's document management system as falling within the scope of your application:

1. version of the draft proposal and annexes as part of the Interservice Consultation ISC/2023/04946;
2. version COM(2023)416/1 of the draft proposal and annexes;
3. version COM(2023)416/2 of the draft proposal and annexes;
4. version COM(2023)416/3 of the draft proposal and annexes;
5. version COM(2023)416 final of the proposal and annexes which corresponds to adopted proposal on 5 July 2023 by the Commission. These documents are publicly available at the following website:

1. ASSESSMENT UNDER REGULATION 1049/2001

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I inform you that no access can be granted to the requested documents 1 to 4 as disclosure is prevented by the exception under Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001, related to the on-going co-decision process.

We consider that, at this stage, a full disclosure of the requested documents would seriously undermine the ongoing legislative process for the adoption of the Commission's legislative Soil Monitoring Law proposal. The relevant decision-making process to be protected is the legislative procedure until the final adoption by the EU Legislator of the Commission's proposal. In fact, the adoption of the Commission's proposal on 5 July 2023 is not a 'decision' but the act marking the beginning of a complex inter-institutional process, in the course of which it might, and normally does, change even in a substantial way. It is the legislative process that needs to be protected and not the mere adoption of a Commission's proposal; artificially dividing the legislative process into different parts and thus excluding the documents concerned from the coverage of the exception in point in the course of this process would deprive the protection granted by the first subparagraph of Article 4(3) of the Regulation of its intended effect.

The disclosure of these documents would reveal preliminary views and policy options which are currently under consideration. The co-legislators must be free to explore all possible options in preparation of their final decision free from external pressure. In the present case, in particular, the disclosure of the requested documents could be artificially exploited to put in question the legality of the future legislative act or parts thereof and could therefore negatively influence the positions taken by the two branches of the EU Legislator in their quest for a political compromise.

1.1. Partial access

We have considered whether partial access could be granted to the documents requested in accordance with Article 4(6) of the Regulation 1049/2001. However, partial access is not possible considering that the documents concerned are covered in their entirety by the exception under Article 4(3), first subparagraph, of Regulation 1049/2001.

1.2. Overriding public interest

The exceptions laid down in Article 4(3) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the document. We have examined to which extent the exception laid down in Article 4(3) of Regulation 1049/2001 may be waived in case of an overriding public interest in disclosure. Having analysed your request, we have not found any elements which could justify the existence of an overriding public interest in the sense of the Regulation, which would outweigh the exception stipulated in Article 4(3) mentioned above. Therefore, we have concluded that access to the aforementioned documents cannot be granted.

2. CONFIRMATORY APPLICATION

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 (<https://www.ec.europa.eu/transparency/documents-request>) (available only for initial requests submitted via the portal account),

or

- by mail to:

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

Yours sincerely,

Electronically signed

Florika FINK-HOOIJER