



EUROPEAN COMMISSION

Regulatory Scrutiny Board
The Chair

Brussels
SG.A.2/FL

Honourable Members of the European Parliament,

Subject: Your application for access to documents – Ref GestDem No 2021/8119

We refer to your letter dated 15/12/2021 in which you make a request for access to documents, registered under the above-mentioned reference number.

You request the access to meeting records and documents prepared in the context of the scrutiny review of the impact assessment on sustainable corporate governance.

Your application concerns the following documents:

- a) The first and second opinions of the Regulatory Scrutiny Board on the Commission's impact assessment on a sustainable corporate governance proposal;
- b) A list of all meetings attended by the Members of the Regulatory Scrutiny Board with external stakeholders on the sustainable corporate governance proposal;
- c) All correspondence exchanged between Members of the Regulatory Scrutiny Board and external stakeholders on the sustainable corporate governance proposal.

Concerning the list of all meetings with external stakeholders on sustainable corporate governance (item b), in line with the Decision setting up the Regulatory Scrutiny Board¹, the Regulatory Scrutiny Board can carry out outreach activities such as consultations and exchanges of views on horizontal, sectoral or methodological issues in the context of better regulation. However, the Board Members shall not discuss individual files with directly concerned stakeholders. For this reason, the Members of the Board have not met with any external stakeholders on the subject of sustainable corporate governance. Consequently, the document listed under b) does not exist.

Concerning the correspondence between the Regulatory Scrutiny Board and external stakeholders on the sustainable corporate governance proposal (item c), the following documents fall within the scope of your application:

- First letter from the Confederation of Swedish Enterprise (ARES(2021)1090103) and reply to it (Ares(2021)1954339)

¹ P2/2020

[Type the address here.](#)

- Second letter from the Confederation of Swedish Enterprise (ARES(2021)7167784) and reply to it (ARES(2021)7180289)
- Letter from and reply to ecoDa (Ares(2021)7898403 and 7898802)
- Email from and reply to VDMA + annex (ARES(2021)75759)
- First letter from the Confederation of Danish Industry (ARES(2021)1772078) and reply to it (ARES(2021)1954517)
- Second letter from the Confederation of Danish Industry (ARES(2021)7014736) and reply to it (ARES(2021)7174738)
- Letter from the European Issuers (ARES(2021)858600) and reply to it (ARES(2021)949716)
- Email exchange with Sustainablepublicaffairs (ARES(2021)7887466)

You find attached the listed documents. In line with the above-mentioned decision, the Board did not accept any request for meetings, nor did it discuss with any external stakeholders the issue at stake. The role of the Regulatory Scrutiny Board, as defined in its mandate, is to scrutinise the quality of impact assessments ensuring that they reflect a well-justified problem, real alternative options and a comprehensive analysis of impacts. This analysis of impacts should identify who is affected by the proposal, the costs and benefits and pros and cons of the options presented and it should justify the selection of the preferred option, based on the analysis. The Board takes no view on the political decision, which is taken by the College, informed by an evidence-based impact assessment. Furthermore, the Board's scrutiny concerns only the draft impact assessment, not the legislative proposal.

Regarding the correspondence with third parties, a complete disclosure of the identified documents is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation (EC) No 1049/2001. The documents contain the names of individuals and of staff members not pertaining to the senior management (as well as handwritten signatures).

Article 9(1)(b) of the Data Protection Regulation does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data nor do you put forward arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Please note that the documents originating from third parties are disclosed to you based on Regulation (EC) No 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released documents without the agreement of the originator, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their reuse.

Finally, concerning the requested opinions of the Board (item a, ARES references 2021/3065513 and 2021/7290822), 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 when the Commission adopts it. The analysis of whether or not to grant access to these documents is based on the specificities of this case. 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 reveal preliminary views and policy options, which are currently under consideration. Services in the Commission 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. The public interest that you invoke in your letter concerns the need to resolve any doubt on the integrity, objectivity and impartiality on the process and indeed in the Regulatory Scrutiny Board's interpretation of its mandate. However, as explained earlier, the mandate of the Board is specified in the decision setting it up according to which Board Members shall not discuss individual files with directly concerned stakeholders. The release of the requested opinions already at this stage would not address the public interest of ensuring impartiality of the Board. Given that, the public interest in making the content of the documents public does not outweigh the harm the disclosure would cause to the interest protected by the invoked exceptions.

We have 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 explained objectives of the request. Redacting sensitive parts of these documents would leave little substance to the documents requested.

However, considering your interest on the issue, we would like to share with you the main elements of the concerns expressed by the Board in relation to the sustainable corporate governance analysis. The Board found in its two opinions that the impact assessment was not sufficiently well prepared. It found a lack of clarity and evidence in the report. Policy options were not sufficiently developed. Costs and benefits of options were not sufficiently clear and the proportionality of measures not sufficiently demonstrated. The initiative involves many types of impacts (i.e. environmental impact, human rights impacts, impacts on businesses and impacts on third countries) that need to be thoroughly assessed. The opinions indicate that the impact assessment was not sufficiently mature to pass the quality standards of the Commission. As with all opinions from the Board, the directorates-general in charge of preparing the initiatives to be submitted to the College are now thoroughly considering the consequences for the impact assessment and are completing and adjusting it accordingly, in order to meet the required standards.

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

Yours sincerely,

Veronica Gaffey

Enclosure: 14 documents