

Dear EU Ombudsman, Ms O'Reilly,

Further to my complaint to your office about the work of the Regulatory Scrutiny Board (RSB), which is now being handled as complaint 439/2023/KR, I am writing to submit a further complaint regarding the handling of access to documents requests by the RSB and the European Commission's Secretariat-General.

**Against which European Union (EU) institution or body do you wish to complain?**

The European Commission, specifically the RSB and the Secretariat-General which is where the RSB and its secretariat are situated.

**What is the decision or matter about which you complain? When did you become aware of it? Add annexes if necessary.**

I have two access to document requests (currently at confirmatory application stage) to seek access to the impact assessments and RSB opinions on two specific chemical policy files: the REACH revision (1) and the Mercury regulation (2). So far neither has received an adequate response from the Commission and the confirmatory applications have not been dealt with in a reasonably timely manner.

1. REACH: First tabled request on 25 November 2022. I only received a heavily-redacted impact assessment and opinion, and a confirmatory application was tabled on 19 January 2023 to challenge the redactions. The Commission has not responded since 2 March 2023.

All paperwork is available here: <https://www.asktheeu.org/r/46e2667d-45f4-4d1d-b4e8-ef39cccb66de>

2. Mercury: First tabled request on 17 January 2023. The confirmatory application was tabled on 1 March 2023 as I did not receive any documents at all. The Commission has now refused to put any timetable on a response.

All paperwork is available here: <https://www.asktheeu.org/r/166f3e65-42e9-4083-bf0a-48127aeefd6f>

I note that usually the Commission only publishes the final impact assessment(s) on any given legislative dossier and the RSB's final opinion on it, when the legislative proposal itself is published. This procedure is set out in the RSB's most recent Rules of Procedure

dated 31 January 2023.<sup>1</sup>

However, I am aware of the Judgment of the Court of Justice of the European Union of 4 September 2018 in Case C-57/16 P<sup>2</sup> 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, before the proposal, and that access should not be denied on request.

The Court made clear that transparency in EU decision-making processes contributes “to increasing those citizens’ confidence in those institutions” and recognised that the disclosure of information in good time is crucial to allow citizens to make their views known in an ongoing decision-making procedure. Specifically regarding draft and final impact assessment reports and RSB opinions, the Court held that, “such a disclosure, at a time when the Commission’s decision-making process is still ongoing, enables citizens to understand the options envisaged and the choices made by that institution and, thus, to be aware of the considerations underlying the legislative action of the European Union. In addition, that disclosure puts those citizens in a position effectively to make their views known regarding those choices before those choices have been definitively adopted, so far as both the Commission’s decision to submit a legislative proposal and the content of that proposal, on which the legislative action of the European Union depends, are concerned.”

Based on this I consider that the Commission has not met the requirements of 1049/2001 nor of Case C-57/16 P.

### **What, in your view, should the institution or body do to put things right?**

I consider that the Commission should open up the work of the RSB by answering my confirmatory applications immediately and, in the future, publishing impact assessments and RSB opinions in real time.

I am especially worried that these ongoing delays are an attempt to avoid responding to these requests until the legislative proposals themselves are published, when these documents will then be made public and my requests effectively become null and void. The point of my original access to documents requests however was to obtain the documents “...at a time when the Commission’s decision-making process is still ongoing” to enable “citizens to understand the options envisaged and the choices made by that institution and, thus, to be aware of the considerations underlying the legislative action of the European Union. In addition, that disclosure puts those citizens in a position effectively to make their views known regarding those choices before those choices have been definitively adopted...”<sup>3</sup>

I therefore consider action to resolve these confirmatory applications to be most urgent.

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1 [https://commission.europa.eu/document/download/6f90ad20-4eb9-4888-ac72-ac7e9ff49223\\_en?filename=2%20RSB%20Rules%20of%20procedure-%20revision%202023%20signed.pdf](https://commission.europa.eu/document/download/6f90ad20-4eb9-4888-ac72-ac7e9ff49223_en?filename=2%20RSB%20Rules%20of%20procedure-%20revision%202023%20signed.pdf)

2 Case C-57/16P, ClientEarth v. EU Commission, ECLI:EU:C:2018:660

3 Case C-57/16P, ClientEarth v. EU Commission, ECLI:EU:C:2018:660

**Have you already contacted the EU institution or body concerned in order to obtain redress?**

Yes. I have chased both requests, most recently on 17 May 2023.

**If the complaint concerns work relationships with the EU institutions and bodies: have you used all the possibilities for internal administrative requests and complaints provided for in the Staff Regulations? If so, have the time limits for replies by the institutions already expired?**

Not applicable.

**Has the object of your complaint already been settled by a court or is it pending before a court?**

Please see our comments above about the Judgment of the Court of Justice of the European Union of 4 September 2018 in Case C-57/16 P as it relates to the publication of impacts assessments and RSB opinions.

**Do you agree that your complaint may be passed on to another institution or body (European or national), if the European Ombudsman decides that he or she is not entitled to deal with it?**

Yes.

**Do you agree to participate in a short survey (about one minute in length), once your case has been closed, to help us improve the service we provide to complainants?**

Yes.

I look forward to hearing from you in response to these concerns. Please let us know if you require any additional information. Thank you in advance for your interest.

Yours sincerely,



Vicky Cann  
[vicky@corporateeurope.org](mailto:vicky@corporateeurope.org)