



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND TECHNOLOGY

The Director-General

Brussels, 15th April 2021  
CONNECT/R4

Mr Laurens Cerulus  
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*Advance copy via emails:*

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**REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT**

**Subject: Your applications for access to documents – Ref. GestDem 2021/0725, Ref. GestDem 2021/0726, Ref. GestDem 2021/0727, Ref. GestDem 2021/0728, Ref. GestDem 2021/0729 and Ref. GestDem 2021/0730**

Dear Mr Cerulus,

We refer to your emails dated 15 February 2021 wherein you make six requests for access to documents pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (hereinafter 'Regulation 1049/2001'), registered under the abovementioned reference numbers. We also refer to our email, dated 8 March 2021, our reference Ares(2021)1698835, whereby we informed you that the time limit for handling your application was extended by 15 working days pursuant to Article 7(3) of Regulation 1049/2001.

**1. SCOPE OF YOUR APPLICATIONS**

By your application **Ref. GestDem 2021/0725**, you requested access a) to the meeting minutes of the "Roundtable skills on Microelectronics" held by Commissioner Thierry Breton on 05/10/2020 with semiconductor companies and b) all correspondence between the Commission

and the companies present at the roundtable prior to and after the roundtable, related to the topics of discussion that were discussed at the roundtable.

By your application **Ref. GestDem 2021/0726**, you requested access to a) the meeting minutes of the "Roundtable on Processors" held by Commissioner Thierry Breton on 27/11/2020 with semiconductor companies and b) all correspondence between the Commission and the companies present at the roundtable prior to and after the roundtable, related to the topics of discussion that were discussed at the roundtable.

By your applications **Ref. GestDem 2021/0727, 2021/0728, 2021/0729 and 2021/0730**, you requested access to all correspondence (including emails, letters and other forms of correspondence) between the European Commission and **a) Infineon Technologies, b) ASML, c) NXP Semiconductors, d) STMicroelectronics**, respectively, on the topic of European public policy on semiconductors, in the period from October 1, 2020 until February 15, 2021. You also indicated that we may exclude correspondence related to specific projects funded under the EU's Horizon 2020 or previous funding programs that the abovementioned companies are/were members of.

Given the wide-scope of your requests we contacted you on 8 March 2021 with a view to finding a fair solution based on Article 6(3) of Regulation 1049/2001 (our reference, Ares(2021)1698835). In order to help you narrow down the scope of the requests, we provided you with the list of documents and the approximate number of documents per category that had been identified at that stage. We indicated the steps that the handling of your application would entail and we concluded that according to our estimates a maximum of 15 documents could possibly be dealt with within 30 working days counting from the date of registration of your application.

By your emails dated 8 March 2021, you replied that you are interested in correspondence relating to policy discussions and positions specifically and not in correspondence that merely deals with planning, logistics or preparation of interactions between the companies and the Commission. You suggested that we include the following documents in the reply to your requests for access to documents: a) Minutes of the Roundtable on 5 October 2020, b) Minutes of the Roundtable on 27 November 2020 c) All attached text or presentation documents (.pdf, .doc, .docx, .ppt, .pptm and similar formats) in the email exchanges, d) Emails that include positions or statements of companies regarding EU policy specifically. You indicated that you would presume that this reduces the amount of information to a manageable amount.

By our email of 9 March 2021 (our reference, Ares(2021)1722662), we clarified that we had already read your request for access to correspondence as referring to correspondence relating to the relevant policy issues and discussions and thus correspondence relating to logistics, invitations, organisational matters were not counted in the approximate number of documents that have been identified at that stage. We indicated that the scope of your requests still remains wide and must be reduced to a manageable amount of documents and up to a maximum of 15 documents. We informed you that we will proceed with the assessment of the minutes of the two Roundtables for which you expressed interest and we invited you to specify us the emails and attachments that you are interested in and up to a maximum of the remaining 13 documents.

You have not responded to our email of 9 March 2021.

In line with the principles of sound financial management and good administration to which the Commission is bound to pursuant to Article 310(5) of the Treaty on the functioning of the European Union, we are obliged to balance your possible interest in access against the workload resulting from the processing of your application. This is in line with the case law of the EU Courts<sup>1</sup>.

We have therefore, as announced in our emails of 8 and 9 March 2021, restricted the scope of your applications to 15 documents. This is what we could achieve, taking into account the Commission's resources and the global workload of the concerned staff during the same period, within the given timeframe

## **2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST**

Within the timeframe provided in Article 7 of Regulation 1049/2001 we were able to identify and assess the following documents which fall within the scope of the request after having been restricted as set out above:

- Minutes of the Roundtable on 5 October 2020 – Pact for Skills roundtable with Commissioners Breton and Schmit for the microelectronics sector (**Document 1**)
- Minutes of the Roundtable on processors with Commissioner Breton, 27/11/2020 (**Document 2**)
- Microelectronics CEO Roundtable, Sherpa meeting 4/12/2020, DG CONNECT presentation – (**Document 3**)
- ASML document with talking points ‘Pact for Skills in Microelectronics’ – (**Document 4**)
- ASML document: Industrial Alliance for Microelectronics Sherpa meetings – (**Document 5**)
- Letter from ASML and IMEC to Commissioner Breton dated 7 January 2021– (**Document 6**)
- DG CONNECT reply to the letter from ASML and IMEC dated 1 February 2021 – (**Document 7**)
- Infineon Technologies paper – (**Document 8**)
- Infineon Technologies paper: ‘The European Embedded Processor Family must include Processor Variants in a Multi-Dimensional-Design Space’ – (**Document 9**)
- Letter from Infineon Technology to Commissioner Breton dated 18 January 2021 – (**Document 10**)
- DG CONNECT reply to the letter from Infineon Technologies – (**Document 11**)
- NXP email dated 9 December 2021 – (**Document 12**)

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<sup>1</sup> Judgment of the Court of Justice of 2 October 2014 in case C-127/13, Strack v Commission, paragraphs 27-28.

- NXP paper – **(Document 13)**
- NXP powerpoint slide – **(Document 14)**
- Email exchanges between 2 and 11 December 2020 regarding the follow up meeting of 4/12/2020 to the Roundtable on Microelectronics with Commissioner Breton of 27/11 – **(Document 15)**

### **3. ASSESSMENT UNDER REGULATION 1049/2001**

Following an examination of the documents requested under the provisions of Regulation 1049/2001 and taking into account the opinion of the third parties, we have arrived at the conclusion that full access can be granted for three documents. Partial access can be granted for eight documents and disclosure is refused for four documents, as disclosure of these parts is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

#### **A. Full disclosure**

Documents 1, 5, 9 are fully disclosed.

#### **B. Partial disclosure**

##### *(i) Protection of privacy and integrity of individuals*

Full disclosure of Documents 2, 4, 6-7, 10-11, 15 is prevented by the exception concerning the protection of privacy and integrity of the individual outlined in Article 4(1)(b) Regulation 1049/2001, since they contain the following personal data:

- Names, functions and contact information of Commission staff members not pertaining to the senior management
- Names, initials, functions and contact details of other natural persons.
- Handwritten signatures of natural persons

Article 9(1)(b) of the Data Protection Regulation<sup>2</sup> 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 any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

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<sup>2</sup>Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.

Consequently, I conclude that, pursuant to Article 4(1)(b) Regulation 1049/2001, access cannot be granted to the personal data contained in the requested documents, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

*(ii) Protection of commercial interests*

Article 4(2) first indent of Regulation 1049/2001 provides that the institutions shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, unless there is an overriding public interest in disclosure.

This provision must be interpreted in light of Article 339 of the Treaty of the Functioning of the European Union (TFEU), which requires staff members of the EU institutions to refrain from disclosing information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

Parts of Document 2 and 15 are covered by the abovementioned exception.

Parts of Document 2 contain business sensitive information relating to the concerned third parties' positions and views. Disclosure of these parts of the documents would seriously undermine the third parties' commercial interests.

Parts of Document 15 contain confidential and sensitive business information related to the respective third parties' activities, positions and strategies. Disclosure of these parts of the document would affect the third parties' relations and position in the market and would undermine their interests, including their commercial interests and intellectual property rights.

Consequently, the above-mentioned parts of Document 2 and 15 have been blanked out.

*(ii) Protection of the decision-making process*

The first subparagraph of Article 4(3) of Regulation 1049/2001 provides that '[a]ccess to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.'

Parts of Documents 2, 3, 6, 7 and 11 are covered by the abovementioned exception as they contain information related to the ongoing decision-making process of the definition of policies in the area of microelectronics. Disclosure of these parts would seriously undermine the protection of the ongoing decision-making process, as it would reveal preliminary views and considerations. The Commission must be free to explore all possible options in preparation of a decision free from external pressure. Therefore, the exception laid down in the first subparagraph of Article 4(3) of Regulation 1049/2001 applies and the above-mentioned parts of Documents 2, 3, 6, 7 and 11 have been blanked out.

### **C. Non disclosure**

We regret to inform you that access to Documents 8, 12-14 cannot be granted as disclosure is prevented by the exception of Article 4(2) first indent of Regulation 1049/2001, with regard to the protection of commercial interests of a natural or legal person, including intellectual property.

Please note that these documents originate from third parties that have been consulted and objected to their disclosure on the grounds of the above-mentioned exception. These documents contain confidential and commercially sensitive information related to the respective third parties' positions, views, activities and strategies.

Disclosure of these documents would undermine the third parties' position in the market and could affect their interests, including their commercial interests and intellectual properties rights.

We have considered whether partial access could be granted to these documents. However, partial access is not possible considering that the documents are covered in their entirety by the abovementioned exception of Article 4 of Regulation 1049/2001.

### **4. OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

The exceptions laid down in Articles 4(2) and 4(3) of Regulation 1049/2001 apply, unless there is an overriding public interest in the disclosure of documents. Such an interest must, firstly, be a public interest and, secondly, outweigh the harm caused by disclosure. We have examined whether there could be an overriding public interest in the disclosure of documents which are being withheld but we have not been able to identify such an interest.

### **5. REUSE OF DOCUMENTS**

You may reuse public documents 1-3, 7, 11 and the parts of document 15 which have been produced by the European Commission or by public and private entities on its behalf based on the [Commission Decision on the reuse of the Commission documents](#). You may reuse the documents disclosed free of charge and for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the reuse.

Please note that Documents 1 and 2 were drawn up for internal use under the responsibility of the relevant services of DG CONNECT. They solely reflect the services' interpretation of the interventions made and do not set out any official position of the third parties to which the documents refer, which were not consulted on their content. They do not reflect the position of the Commission and cannot be quoted as such.

Documents 4-6, 9, 10, and parts of document 15 originate from third parties. Please note that they 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 originators, who may hold an

intellectual property right on them. The Commission does not assume any responsibility from their reuse.

## **6. CONFIRMATORY APPLICATION**

In accordance with Article 7(2) of Regulation 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 Secretariat-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](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,

(e-Signed)

Roberto Viola

Enclosures: (11)

