



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND TECHNOLOGY

The Director-General

Brussels, 31st August 2022
CNECT.R.4/RV

Scott Brown
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By email:

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Subject: Your applications for access to documents GestDem 2022/3228, 2022/3233 and 2022/3289

Dear Mr Brown,

We refer to your emails dated 3 June 2022 wherein you make three requests for access to documents pursuant to Regulation (EC) No 1049/2001 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 27 June 2022 (under the reference number Ares(2022)4684012) and our email dated 28 June 2022 (under the reference number Ares(2022)4712108), whereby we informed you that the time limit for handling your applications was extended by 15 working days pursuant to Article 7(3) of Regulation 1049/2001.

1. SCOPE OF YOUR APPLICATIONS

By your application under the reference number **GestDem 2022/3228**, you request access to:

‘DG CONNECT input into the development of the EU toolbox for 5G security of 2021. Specifically, I am interested in working/position papers produced by DG CONNECT, comments on draft versions of documents related to the development of the toolbox, and

any other information/documentation relating to DG CONNECT's involvement with this policy.'

By your application under the reference number **GestDem 2022/3233**, you request access to:

'DG Connect engagement with and policy on Chinese information and communications technology firms in the period of 2019-2022.

This request covers:

Copies of internal working policy/position papers produced by DG CONNECT outlining prospective Commission initiatives and other input into the development of EU policies pertaining to market access and operation of information and communications technology firms of Chinese (PRC) origin, particularly those involved with the provision of 5G communications technology, infrastructure, and services.

Communications to DG CONNECT by third parties (corporations, industry representatives, lobby groups/firms, public interest groups) outlining their positions with respect to any aspect of EU policy/law on 5G communications technology and security.

Internal DG CONNECT meetings (minutes and reports thereof) regarding the above policy issues.

Meetings (minutes and reports thereof) between DG CONNECT officials (defined as any individual working for DG CONNECT) and representatives of Chinese firms.

Specifically, by 'Chinese information and communications technology firms', I refer to the broad category of technology firms that originate in the People's Republic of China, including but not limited to: Huawei, Miteno, MXSoft, Ningbo Orient Wires & Cables, OTEC Technology, QuantumCTek, Shangang, Shenzhen Friendcom Technology Development, World Telecom Satellite, Yak, Zhizyun, and ZTE.'

By your application under the reference number **GestDem 2022/3289**, you request access to:

'-All documents -including but not limited to minutes, (hand-written or typed) notes, audio recordings, verbatim reports, operational conclusions, lines to take, e-mails, and presentations -between Commission officials (see note 1) and EU Member State officials (see note 2) regarding the development of the EU toolbox for 5G security that was published in 2021.

-All correspondence (i.e. any emails, correspondence, telephone call notes, and/or text messages including WhatsApp exchanges) between Commission Officials and EU Member State officials regarding the development of the EU toolbox for 5G security that was published in 2021.

Note 1: 'Commission officials' are defined here as individuals (or groups thereof) employed by/acting on behalf of the European Commission.

Note 2: 'EU Member State officials' are defined here as individuals employed by/acting on behalf of the national government of a Member State and the various institutions/agencies/bodies thereof -including heads of government/state, ministers, etc. - and/or the Permanent Representations to the EU.'

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUESTS

We have identified the following documents as falling within the scope of your applications:

- State of play-15 July 2019 – EC Recommendation - 5G cybersecurity – **Document 1**
- Presentation by third party in the meeting on 8 March 2022 – **Document 2**
- Draft agenda of the kick-off meeting for Cooperation Group Work Stream on the security of 5G Networks on 11 April 2019– **Document 3**, enclosed in the below document:
- Internal Note of 01/04/19 - Implementation of the Recommendation on cybersecurity of 5G networks – **Document 4**
- Back to Office (BTO) from the meeting with third party on 28 September 2021 – **Document 5**
- Back to Office (BTO) report of the meeting with third party on 19 November 2021 – **Document 6**
- Back to Office (BTO) Report from visit on 1 March 2021 – **Document 7**
- Back to Office (BTO) Report of the meeting with third party on 17 September 2021 – **Document 8**
- Presentation by third party - Spectrum policy – **Document 9**
- Presentation by third party - 5G Evolution: European spectrum roadmap, April 2022- **Document 10**
- Presentation by third party - Open RAN discussion - 22 February 2021 – **Document 11**
- Presentation by third party - ‘Mid-bands availability’ in medium/long term, September 2019 – **Document 12**
- Debrief from the meeting with third party on 12 November 2020– **Document 13**
- Back to Office (BTO) Report of the meeting with third party on 4 July 2019- **Document 14**
- EU Risk assessment 5G Cybersecurity – **Document 15**
- Letter from third party dated 29 September 2020 – **Document 16**
- Email of third party dated 7 May 2020 DG CONNECT’s Director-General – **Document 17** and its annex
- Third party’s paper – **Document 18**
- Email from third party dated 16 April 2020 to DG CONNECT’s Director-General– **Document 19** and its annex
- Third party paper – **Document 20**
- Presentation by third party - EMF Solution workshop - 4 July 2019 – **Document 21**
- Presentation by third party and other companies in the meeting with EC on Mid-bands future spectrum 9 September 2021 – **Document 22**
- Presentation by third party on EMF Update, February 2021 – **Document 23**
- Slides presented by third party in the meeting of 19 November 2021 attached to the abovementioned Document 6 – **Document 24**

3. ASSESSMENT UNDER REGULATION 1049/2001

Following an examination of the identified documents under the provisions of Regulation 1049/2001, we have arrived at the conclusion that full access can be granted to three documents. Partial access can be granted to 10 documents whilst access is denied for the remaining documents, as disclosure of these (parts of) the documents is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

A. Full disclosure

Documents 1-3 are fully disclosed.

B. Partial disclosure

(i) Protection of privacy and integrity of individuals

Full disclosure of Documents 5-13 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, initials, functions and contact details of Commission staff members not pertaining to the senior management;
- Names, functions and contact details of other natural persons.

Article 9(1)(b) of the Data Protection Regulation¹ 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.

Consequently, we have concluded 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 Documents 7-14 are covered by the aforementioned exception of Article 4(2). In particular, they contain confidential and sensitive business information relating to the concerned third parties' activities, strategies and views. Disclosure of these parts of the document would seriously affect the third parties' relations and position in the market and would undermine their commercial interests.

¹ 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 the relevant parts of the abovementioned documents have been blanked out, as their disclosure is prevented by the exception to the right of access laid down in Article 4(2), first indent of Regulation 1049/2001.

A part of Document 13 has been also redacted as being outside the scope of the request.

(iii) Protection of the decision-making process

According to the second subparagraph of Article 4(3) of Regulation 1049/2001, '*access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure in view of the protection of the decision-making process.*'

Parts of Documents 5 and 8 contain opinions of the Commission on the 5G cybersecurity and on Open Radio Access Networks (Open RAN), which form part of deliberations and preliminary consultations within the Commission for which the decisions have been taken. The public disclosure of these internal views would deter the service concerned from freely expressing their opinions and having frank, internal discussions in the future, if they were to be made publicly available. Furthermore, this would pose a continued risk to future internal discussions and deliberations on 5G networks and expose the Commission to undue external pressure and disseminate preliminary conclusions that do not represent the final position of the European Commission.

In light of the foregoing, the risk of disclosure of these views and reflections put forward in parts of Documents 5 and 8 would seriously undermine the decision-making process. This risk is also reasonably foreseeable and not purely hypothetical.

Consequently, the relevant parts of documents 5 and 8 have been blacked out.

C. Non -disclosure

We regret to inform you that access to Documents 4 and 15-24 cannot be granted as their disclosure is prevented by exceptions laid down in Article 4 of Regulation 1049/2001.

(i) Protection of Public security

Article 4(1)(a), first indent of Regulation 1049/2001 stipulates that access to a document shall be refused where disclosure would undermine the protection of the public interest as regards public security.

According to settled case-law, "the particularly sensitive and essential nature of the interests protected by Article 4(1)(a) of Regulation No 1049/2001, combined with the fact that access must be refused by the institution, under that provision, if disclosure of a document to the public would undermine those interests, confers on the decision which must thus be adopted by the institution a complex and delicate nature which calls for the exercise of particular care. Such a decision therefore requires a margin of appreciation"². In this context, the Court of Justice has acknowledged that the institutions enjoy "a wide discretion for the purpose of determining whether the disclosure of documents relating to

² See Judgment in *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 36

the fields covered by [the] exceptions [under Article 4(1)(a)] could undermine the public interest"³.

Disclosure of Document 15 is prevented by the abovementioned exception as it contains sensitive information related to the perceived level of exposure of Member States to various threats, vulnerabilities and risks related to 5G networks. Therefore, public release of this document would undermine the protection of the public interest as regards public security. Consequently, access to this document has been refused.

(ii) Protection of commercial interests

Documents 16-24 are covered by the exception of Article 4(2) first indent of Regulation 1049/2001 for the protection of commercial interests.

Documents 16-23 originate from third parties and contain confidential and commercially sensitive information related to the respective third parties' positions, views and strategies. We could not obtain the views of the concerned third parties about a potential disclosure within the given timeframe. After assessment, we have come to the conclusion that a disclosure could undermine their commercial interests.

Document 24 is also a presentation that contains business sensitive information that was shared confidentially by the concerned third party and would undermine their commercial interest if publicly released.

Therefore, access is refused to these documents as their disclosure is prevented by the exception to the right of access laid down in Article 4(2), first indent of Regulation 1049/2001.

(iii) Protection of the decision-making process

Document 4 is an internal note on the implementation of the recommendation on cybersecurity of 5G networks, the disclosure of which is prevented on the grounds of Article 4(3), second subparagraph of Regulation 1049/2001. The aforementioned document contains opinions for internal use which form part of deliberations and preliminary consultations within the Commission for which the decisions have been taken. The public disclosure of these internal views would deter the service concerned from freely expressing their opinions and having frank, internal discussions in the future, if they were to be made publicly available. This would pose a continued risk to future internal deliberations on implementation measures with regard to cybersecurity of 5G on future networks. Furthermore, it would expose the Commission to undue external pressure and disseminate preliminary conclusions that do not represent the final position of the European Commission. In light of the foregoing, the risk of disclosure of these views and reflections put forward in Documents 4 would seriously undermine the decision-making process. This risk is also reasonably foreseeable and not purely hypothetical.

Access must therefore be refused to Document 4 on the basis of the exception to the right of access laid down in Article 4(3), second subparagraph of Regulation 1049/2001.

Moreover, parts of Documents 4, 16-17 and 19 contain personal data, in particular the names, functions, contact details, handwritten signatures of natural persons, thus their

³ Judgment in *Council v Sophie in't Veld*, C-350/12 P, EU:C:2014:2039, paragraph 63

disclosure is prevented by the exception of Article 4(1)(b) of Regulation 1049/2001 for the reasons set out in Section B (i). Moreover, parts of Documents 16-17 and 19 fall outside the scope of the request.

4. PARTIAL ACCESS

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

5. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exception laid down in Article 4(2) of Regulation 1049/2001 applies, 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 (the parts of) the documents which are being withheld but we have not been able to identify such an interest.

6. REUSE OF DOCUMENTS

You may reuse Documents 1, 3, 5-8, 13-14 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 these documents 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.

Documents 3, 5-8 and 13-14 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. They do not reflect the position of the Commission and cannot be quoted as such.

Documents 2 and 9-12 originate from third parties. Please note that they are disclosed to you based on Regulation 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 document without the agreement of the originators, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from its reuse.

7. 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 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

Yours faithfully,

Electronically signed

Roberto Viola

Enclosures: (13)