



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND TECHNOLOGY

The Director-General

Brussels,
CNECT.R.4/RV

Mr Scott Brown
Room 4.38
Scrymgeour Building
Park Place
Dundee DD1 4HN
Scotland
United Kingdom

By email:

[ask+request-11396-
0e10c9d4@asktheeu.org](mailto:ask+request-11396-0e10c9d4@asktheeu.org)

Subject: Your application for access to documents – GestDem 2022/3288

Dear Sir,

We refer to your email dated 3 June 2022 wherein you make a request 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 number. We also refer to our email dated 5 September 2022 (under the reference number Ares(2022)6129569) 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.

We apologise for the delay in our reply.

1. SCOPE OF YOUR APPLICATION

By your application you requested documents which contain the following information:

''Communications between Huawei Europe and the European Commission regarding the development of the EU toolbox for 5G security of 2021.

Communications between Huawei Europe and the European Commission regarding the implementation of the toolbox for 5G security after its introduction up to the present date (03/06/2022).

'Communications' here taken to cover emails, telephone calls, videoconferencing, letters, meetings (information on dates/times and minutes thereof where available''.

In this regard reference is made to your email, dated 11 August 2022 wherein you clarified that the starting date for coverage of this request is 26 March 2019.

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

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

- Email exchanges of Huawei and Cabinet Vestager between 11 and 14 September 2020 (**Document 1**)
- Letter from Huawei EU Public Affairs to the Executive Vice President Vestager dated 11 September 2020 (**Document 2**)
- DG CONNECT's reply to the abovementioned letter (**Document 3**)
- Letter from Huawei EU Public Affairs to Commissioner Breton dated 11 September 2020 (**Document 4**)
- DG CONNECT's reply to the abovementioned letter (**Document 5**)
- Back to Office (BTO) Report from the visit to Huawei Booth and discussion on 1 March 2021 (**Document 6**)
- Back to Office (BTO) Report of the meeting with Huawei and Law firm on 15 September 2020 (**Document 7**)
- Back to Office (BTO) Report of the meeting with Huawei on 17 September 2021 (**Document 8**)
- Debrief from the meeting with Huawei on 12 November 2020 (**Document 9**)

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 they can be partially disclosed. Disclosure of parts of the documents is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

(i) Protection of privacy and integrity of individuals

Full disclosure of the identified documents 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, contact details and handwritten signatures 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 6-8 are covered by the aforementioned exception of Article 4(2). In particular, they contain confidential and sensitive business information relating to the concerned third party's activities and views. Disclosure of these parts of the documents would seriously affect the third party's relations and position in the market and would undermine their commercial interests.

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.

(iii) Protection of legal advice

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.

Article 4(2) second indent of Regulation 1049/2001 provides that the institutions shall refuse access to a document where disclosure would undermine the protection of [...] legal advice, unless there is an overriding public interest in disclosure.

Parts of Document 7 are covered by the abovementioned exception. These parts contain the position expressed by the law firm participating in the meeting and the information provided is highly confidential and legally binding. Disclosure of these parts of the document would seriously undermine the protection of legal advice within the meaning of Article 4(2) second indent of Regulation 1049/2001.

Consequently, access to these parts of the documents is not granted.

(iv) 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.’

The second subparagraph of Article 4(3) of Regulation 1049/2001 provides that ‘[a]ccess 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.’

Part of Document 9 is covered by the aforementioned exception of Article 4(3) first subparagraph. Disclosure of this part would seriously undermine the protection of the relevant ongoing decision-making procedure, if publicly released. Other parts of Document 9 have been redacted as being outside the scope of the request.

Moreover, parts of Documents 3, 5, 7 and 8 are covered by the aforementioned exception of Article 4(3) second subparagraph, since they contain preliminary views and reflections, which were under consideration at that time. Disclosure of these parts of the documents would seriously undermine the Commission’s functioning and internal decision-making process and deter Commission services and officials from putting forward their views and having frank discussions in the future, without being unduly influenced by the prospect of wide disclosure exposing the Commission to undue external pressure. This risk is also reasonably foreseeable and not purely hypothetical.

Consequently, the relevant parts of Documents 3, 5, 7, 8 and 9 have been blacked out.

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 the parts of the documents which are being withheld but we have not been able to identify such an interest.

5. REUSE OF DOCUMENTS

You may reuse Documents 3 and 5-9 and the parts of Document 1 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 6-9 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 4 and parts of Document 1 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.

6. 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:(9)