



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND
TECHNOLOGY

The Director-General

Brussels,
CNECT/

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REGISTERED MAIL WITH ACKNOWLEDGEMENT OF RECEIPT

Subject: Your application for access to documents – GestDem 2019/4947

Dear Mr Fanta,

We refer to your e-mail dated 20 August 2019 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 above-mentioned reference number. We also refer to our email dated 11 September 2019, our reference Ares(2019)5688172, 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 APPLICATION

In your application, you requested:

' documents which contain the following information:

- All national risk assessments submitted [by] member states as part of the EU-wide risk assessment on the security of 5G networks, as announced by Commissioner Julian King on 19 July 2019'

**2. IDENTIFICATION OF DOCUMENTS AND ASSESSMENT UNDER
REGULATION (EC) 1049/2001**

Your application concerns the national risk assessments that we received from all member states in the context of the preparation of a European Union coordinated risk assessment of 5G networks.

Having assessed the identified documents under the provisions of Regulation 1049/2001, I regret to inform you that access to the identified documents cannot be granted as they are covered by

the exceptions to the right of access laid down in Article 4(1)(a), first indent and in Article 4(3) first subparagraph of Regulation 1049/2001.

Please note that a public version of a consolidated report will soon be available.

a) Protection of the public interest as regards 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 [...] requires a margin of appreciation"* for the institution¹. 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 the fields covered by [the] exceptions [under Article 4(1)(a)] could undermine the public interest"*².

The requested documents were transmitted to the European Commission for the purpose of preparing a European Union coordinated risk assessment of 5G networks, as provided for in the Commission Recommendation C(2019) 2335 final of 26 March 2019 on the cybersecurity of 5G networks. They present the results of the national risk assessments of Member States, in relation to the cybersecurity risks posed to 5G networks. In the future, 5G networks are expected to form the backbone of many connected applications and services, including critical infrastructures and systems. The documents requested contain the results of the assessment by national authorities of the main threats, vulnerabilities and risks affecting 5G networks, as well as an identification of sensitive network assets, which may be more exposed to certain types of security threats. Some of these threats, vulnerabilities and risks may also be relevant for existing (3G/4G) networks. In addition, the documents identify existing or planned measures to address these risks.

Disclosure of these documents would affect the ability of network operators and public authorities of the Member State concerned, as well as from other Member States (in view of certain similar characteristics of network infrastructures) to protect effectively their networks against cybersecurity threats. This could have negative consequences for the security of present and future networks and digital infrastructures and lead to potential security risks for the society as a whole.

Moreover, when considered globally, these national risk assessments constitute sensitive information from a public security perspective, as they provide a detailed, consolidated picture of cybersecurity risks and vulnerabilities in 5G networks on an EU-wide basis and may expose potential gaps in existing mitigation measures.

Based on the foregoing there is a real and non-hypothetical risk, that disclosure of these documents would undermine the protection of public interest, as regards public security.

b) 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 the 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.'

¹ See Judgment in *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 35.

² Judgment in *Council v Sophie in't Veld*, C-350/12 P, EU:C:2014:2039, paragraph 63.

As mentioned above the requested documents were transmitted to the Commission in the context of a Union coordinated risk assessment of 5G networks which is currently under preparation. As set out in the aforementioned Recommendation on the cybersecurity of 5G Networks, the European Union coordinated risk assessment will form the basis for identifying by 31 December a set of possible security mitigation measures.

A disclosure of these documents would therefore seriously undermine the ongoing decision-making process.

3. PARTIAL ACCESS

We have considered whether partial access could be granted to the documents requested. However, partial access is not possible considering that the documents concerned are covered in their entirety by the exceptions under Article 4(1)(a), first indent and Article 4(3) first subparagraph of Regulation 1049/2001.

4. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exception laid down in Article 4(3) 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 documents requested but we have not been able to identify such an interest.

The exception laid down in Article 4(1)(a) of Regulation 1049/2001 is an absolute exception, therefore its applicability does not need to be balanced against any possible overriding public interest in disclosure.

5. 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 sincerely,

(e-Signed)
Roberto Viola