



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR TRADE

The Director-General

Brussels  
TRADE/SW/R3 (2020) 5760487

***By registered letter with  
acknowledgment of receipt***

Mr Angelo Merino  
Calle Jesús Goldero, 19, 1º  
28045 Madrid  
Spain

***Advance copy by email:***  
ask+request-8337-d9c08037@asktheeu.org

**Subject: Your application for access to documents – Ref GestDem 2020/4248**

Dear Sir,

I refer to your application dated 13/07/2020, in which you make a request for access to documents under Regulation (EC) No 1049/2001<sup>1</sup> ('Regulation 1049/2001'), registered on the same date under the above mentioned reference number.

Please accept our apologies for the delay in preparing the reply to your request, which is mainly due to a high number of access to documents requests being processed at the same time by DG Trade.

#### **1. SCOPE OF YOUR REQUEST**

In your request, you asked for access to:

- *Meeting records (emails, minutes, reports, briefing papers, drafts, memos...) involving Huawei officials and/or people representing Huawei's interests.*
- *Correspondence within your personnel and/or the European institutions concerning Huawei, its products and its services.*

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<sup>1</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 20 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

- *Invoices, tenders, service agreements, purchases, orders, procurement documents, offers, etc. concerning products and services using Huawei services*

You have also emphasized in your application that the scope of your request concerned DG Trade and should not be transferred to any other entity.

## **2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001**

In accordance with settled case law<sup>2</sup>, when an institution is asked to disclose a document, it must assess, in each individual case, whether that document falls within the exceptions to the right of public access to documents set out in Article 4 of Regulation 1049/2001. Such assessment is carried out in a multi-step approach:

- first, the institution must satisfy itself that the document relates to one of the exceptions, and if so, decide which parts of it are covered by that exception;
- second, it must examine whether disclosure of the parts of the document in question pose a ‘*reasonably foreseeable and not purely hypothetical*’ risk of undermining the protection of the interest covered by the exception;
- third, if it takes the view that disclosure would undermine the protection of any of the interests defined under Article 4(2) and Article 4(3) of Regulation 1049/2001, the institution is required ‘*to ascertain whether there is any overriding public interest justifying disclosure*’<sup>3</sup>.

In view of the objectives pursued by Regulation 1049/2001, notably to give the public the widest possible right of access to documents<sup>4</sup>, ‘*the exceptions to that right [...] must be interpreted and applied strictly.*’<sup>5</sup>

In reply to your request, I can inform you that we have identified the following **5 documents** that fall within the scope of your request:

1. Report from meeting with Huawei on 13/09/2019-Ares(2020)3132943
2. Report from the meeting with Huawei on Digital Trade issues on 13/06/2018-Ares(2020)5096194
3. Report from meeting with Huawei on 14/01/2019-Ares(2019)206925
4. Flash Report from meeting with Huawei Technologies Co., Ltd on 05/06/2020-Ares(2020)2910600
5. Report from Meeting with Huawei: ITA and trade negotiations on ICT goods on 13/06/2018-Ares(2018)3228644

Copies of the accessible documents are enclosed to this letter.

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<sup>2</sup> Judgment in *Sweden and Maurizio Turco v Council*, Joined cases C-39/05 P and C-52/05 P, EU:C:2008:374, paragraph 35.

<sup>3</sup> *Id.*, paragraphs 37-43. See also judgment in *Council v Sophie in 't Veld*, C-350/12 P, EU:C:2014:2039, paragraphs 52-64.

<sup>4</sup> See Regulation 1049/2001, recital (4).

<sup>5</sup> Judgment in *Sweden v Commission*, C-64/05 P, EU:C:2007:802, paragraph 66.

Having examined the requested documents under the applicable legal framework, I am pleased to grant you nearly full access to **documents 1-3 and 5** where only names and other personal data have been redacted pursuant to article 4(1)(b) of Regulation 1049/2001 and in accordance with Regulation (EC) No 2018/1725. Hence, the main content of these documents relevant to your request is accessible.

In **document 4**, in addition to personal data, additional information was redacted as it is covered by the exception set out in article 4(1)(a) third indent (protection of international relations) and the exception set out in article 4(2) first indent (protection of commercial interests of a natural or legal person, including intellectual property).

The reasons justifying the application of the above-mentioned exceptions are set out below in sections 2.1 and 2.2. Section 3 contains an assessment of whether there exists an overriding public interest in disclosure.

### **2.1 Protection of the public interest as regards international relations (document 4)**

Article 4(1)(a), third indent, of Regulation 1049/2001 provides that ‘*[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: the public interest as regards: [...] international relations*’.

According to settled case-law, ‘*the particularly sensitive and essential nature of the interests protected by Article 4(1)(a) of Regulation 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*’<sup>6</sup>. 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*’<sup>7</sup>.

Some passages of document 4 have been withheld because they include an internal assessment of Huawei’s strategy as it was perceived during the meeting with reference to important trading partners of the EU. Regardless of whether this assessment is valid or not, the disclosure of these parts could clearly undermine the EU’s relations with these international partners as it would at the same time also reveal the EU’s internal assessment as regards the positioning of these partners.

### **2.2 Protection of the privacy and integrity of the individual (documents 1-4)**

Pursuant to Article 4(1)(b) of Regulation 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the

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<sup>6</sup> Judgment in *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 35.

<sup>7</sup> Judgment in *Council v Sophie in ‘t Veld*, C-350/12P, EU:C:2014:2039, paragraph 63.

individual, in particular in accordance with European Union legislation regarding the protection of personal data.

The applicable legislation in this field is Regulation (EC) No 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, repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC<sup>8</sup> ('Regulation 2018/1725').

**Documents 1-5** contain personal information, such as names, e-mail addresses, telephone numbers that allow the identification of natural persons, as well as other personal information.

Indeed, Article 3(1) of Regulation 2018/1725 provides that personal data '*means any information relating to an identified or identifiable natural person [...]'*. The Court of Justice has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data.<sup>9</sup> Please note in this respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are to be considered personal data.<sup>10</sup>

In its judgment in Case C-28/08 P (*Bavarian Lager*)<sup>11</sup>, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable.<sup>12</sup>

Pursuant to Article 9(1)(b) of Regulation 2018/1725, personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if '*[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests'*. Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 2018/1725, can the transmission of personal data occur.

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<sup>8</sup> Official Journal L 205 of 21.11.2018, p. 39.

<sup>9</sup> Judgment of the Court of Justice of the European Union of 20 December 2017 in Case [C-434/16](#), *Peter Novak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, ECLI:EU:T:2018:560.

<sup>10</sup> Judgment of the General Court of 19 September 2018 in case [T-39/17](#), *Port de Brest v Commission*, paragraphs 43-44, ECLI:EU:T:2018:560.

<sup>11</sup> Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, EU:C:2010:378, paragraph 59.

<sup>12</sup> Whereas this judgment specifically related to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, the principles set out therein are also applicable under the new data protection regime established by Regulation 2018/1725.

According to Article 9(1)(b) of Regulation 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your application, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation 1049/2001, access cannot be granted to the personal data, 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.

### 2.3 Protection of commercial interests (document 4)

Article 4(2) first indent, of Regulation 1049/2001 provides that *'[t]he 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'*.

While not all information concerning a company and its business relations can be regarded as falling under the exception of Article 4(2) first indent<sup>13</sup>, it appears that the type of information covered by the notion of commercial interests would generally be of the kind protected under the obligation of professional secrecy<sup>14</sup>. Accordingly, it must be information that is *'known only to a limited number of persons'*, *'whose disclosure is liable to cause serious harm to the person who has provided it or to third parties'* and for which *'the interests liable to be harmed by disclosure must, objectively, be worthy of protection'*<sup>15</sup>.

Some passages of **document 4** have been withheld because they contain business sensitive information pertaining to a company, including details about commercial

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<sup>13</sup> Judgment in *Terezakis v Commission*, T-380/04, EU:T:2008:19, paragraph 93.

<sup>14</sup> See Article 339 of the Treaty on the Functioning of the European Union.

<sup>15</sup> Judgment in *Bank Austria v Commission*, T-198/03, EU:T:2006:136, paragraph 29.

priorities, objectives, strategies, concerns and interests that they pursue in their respective domain.

All this information shared with the Commission constitutes the useful input that can contribute to building the EU's objectives in its trade related policies and negotiations. Ensuring that the Commission continues open and frank discussions with external stakeholders who will be willing to engage with the Commission, are key elements for the success of the internal and external policies of the EU and its international negotiations. Sharing publicly specific business related information that a company provides may prevent the Commission from receiving access to such information in the future.

### **3. OVERRIDING PUBLIC INTEREST**

The exception laid down in Article 4(2) first indent of Regulation 1049/2001 applies unless there is an overriding public interest in disclosure of the document. Such an interest must, first, be public and, secondly, outweigh the harm caused by disclosure.

Accordingly, we have considered whether the risks attached to the release of the withheld parts of **document 4** are outweighed by the public interest in accessing the requested document.

We have not been able to identify any such public interest capable of overriding the commercial interests of the companies concerned. In the present case, there is no such evidence. To the contrary, the prevailing interest in this case lies in protecting the purpose of the Commission's internal consultations as well as the decision-making process at the heart of these consultations.

The public interest in this specific case rather lies in the protection of the legitimate confidentiality interests of the stakeholders concerned to ensure that the Commission continues to receive useful contributions for its ongoing negotiations with third countries without undermining the commercial position of the entities involved or the ongoing decision-making process.

Please also note that the identified **documents 1-5** were drawn up for internal use under the responsibility of the relevant services of DG Trade. 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 to, which was not consulted on its content. They do not reflect the position of the Commission and cannot be quoted as such.

### **4. MEANS OF REDRESS**

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 Secretary-General of the Commission at the following address:

European Commission  
Secretary-General  
Transparency, Document Management & Access to Documents  
BERL 7/76  
Rue de la Loi 200/Wetstraat 200  
1049 Brussels  
Belgium

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours faithfully,



Sabine WEYAND

Enclosures:            Disclosed documents