



EUROPEAN COMMISSION

Brussels, 1.4.2019
C(2019) 2682 final

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**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2018/6628**

Dear [REDACTED],

I refer to your e-mail of 31 January 2019, registered on the same day, in which you submitted a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents² (hereafter 'Regulation (EC) No 1049/2001').

1. SCOPE OF YOUR REQUEST

In your initial application of 10 December 2018, addressed to the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, you requested access to:

- ‘- minutes, correspondence and other documents relating to the meeting of Vice-President Jyrki Katainen with representatives of Huawei Technologies on May 25, 2018
- minutes, correspondence and other documents relating to the meeting of Edward Bannerman with representatives of Huawei Technologies on May 30, 2017
- minutes, correspondence and other documents relating to the meeting of Vice-President Jyrki Katainen with representatives of Huawei Technologies on November 28, 2016

¹ Official Journal L 345 of 29.12.2001, p. 94.

² Official Journal L 145 of 31.5.2001, p. 43.

- minutes, correspondence and other documents relating to the meeting of Edward Bannerman with representatives of Huawei Technologies on March 30, 2015.’

The European Commission has identified the following documents as falling under the scope of your request:

- Request for a meeting with Vice-President Katainen – Friday, 25 May 2018 at 10.00-10.30, reference: Ares(2019)496469 (hereafter ‘document 1’); and
- Meeting request – Changes at Huawei Public Affairs and Communication EU office, reference: Ares(2019)496217 (hereafter ‘document 2’).

In its initial reply of 31 January 2019, the Directorate for Single Market & Connectivity (Directorate E) of the Secretariat-General granted partial access to these documents, based on the exception of Article 4(1)(b) of Regulation (EC) No 1049/2001.

In your confirmatory application, which you submitted on 31 January 2019, you requested a review of this position.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) No 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General conducts a review of the reply given at the initial stage.

In your confirmatory application, which you submitted on 31 January 2019, you requested a review of this position. You stated:

‘I asked for minutes of the meeting between Commissioner Katainen and Huawei’s ██████████ in *April 2018*, but merely received correspondence relating to the meeting’ (emphasis added).

You indicated that you had found it unlikely that no record was drawn up following such a high level meeting. You requested a review of the initial decision only in regard of the existence of any record of the meeting in 2018. Therefore, the scope of this review is limited to this part of your request, explained in the first indent above in point 1, namely: ‘minutes, correspondence and other documents relating to the meeting of Vice-President Jyrki Katainen with representatives of Huawei Technologies on May 25, 2018’.

In your initial application, you referred to a 2018 meeting that took place in *May*. By contrast, in your confirmatory application, you refer to a 2018 meeting in *April*. Thus, you were requested on 6 February 2019 to specify the date of the minutes to which you sought access. The European Commission did not receive a reply to its clarification request. The Secretariat-General reminded you that in the absence of a reply it would understand that you had requested the documents related to the meeting between Vice-President Katainen and ██████████ in *May 2018* (emphasis added). On 19 February 2019, the Secretariat-General confirmed it would reply to your confirmatory application based on the above understanding (that is, a meeting in *May 2018*).

2.1. Existence of the documents requested in the confirmatory application

Concerning your request to receive a record of the meeting that took place in May 2018 between Vice-President Katainen and [REDACTED], I can inform you that the European Commission has carried out a renewed, thorough search for any minutes relating to the meeting in question. Following this renewed search, I confirm that the European Commission has not identified any additional document falling under the defined scope of your application.

In line with the provisions of Article 2(3) of Regulation (EC) No 1049/2001, the right of access guaranteed by that regulation applies only to existing documents in possession of the institution concerned.

Article 2(3) of Regulation (EC) No 1049/2001 provides that '[t]his Regulation shall apply to all documents held by an institution, that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union'.

Accordingly, drawing up additional documents in relation to the meeting mentioned in your initial request would result in the creation of a new document, which, as explained above, does not exist.

The Court has confirmed in Case C-491/15 P³ that, '[...] an application for access that would require the Commission to create a new document, [...], falls outside the framework of Regulation No 1049/2001.'

The Court has also ruled in Case T- 468/16⁴ (*Verein Deutsche Sprache*) that the statement of the European Commission indicating that the requested document(s) do(es) not exist should be considered as correct unless the applicant can rebut this statement by relevant and consistent evidence. In your confirmatory application, I did not find any evidence that would suggest the existence of additional document(s) relating to the subject-matter of your initial application.

In the light of the above, given that the European Commission holds no documents such as those mentioned in your confirmatory application, it is not possible to handle your application.

2.2. Protection of privacy and the integrity of the individual

Please note that, due to an administrative error, personal data contained in documents 1 and 2 were disclosed at the initial stage.

The European Commission did not intend to make public this data, which must also be protected in accordance with Article 4(1)(b) (protection of privacy and the integrity of

³ Judgment of the Court of Justice of 11 January 2017, *Typke v Commission*, C-491/15 P, EU:C:2017:5, paragraph 31.

⁴ Judgment of the Court of Justice of 23 April 2018, *Verein Deutsche Sprache v Commission*, T-468/16, EU:T:2018:207, paragraph 37.

the individual) of Regulation 1049/2001. This error is corrected in the versions of the documents that are again enclosed to this decision.

I therefore ask you to disregard the documents in the versions that were provided to you at the initial level.

3. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,



*For the Commission
Martin SELMAYR
Secretary-General*

Enclosures: 2