



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

The Director-General

Brussels,
CONNECT/R.4

Ms Lora Verheecke
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BELGIUM

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By registered letter with acknowledgement of receipt

Subject: Your application for access to documents – GestDem 2021/2018

Dear Ms Verheecke,

We refer to your request for public 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 documents¹ (hereinafter 'Regulation 1049/2001'), dated 31 March 2021 and registered on the same date under the above-mentioned reference number.

We also refer to our acknowledgment of receipt emails of 31 March 2021, our reference Ares(2021)2229072, and to our holding reply of 26 April 2021, Ares(2020)2770186.

We apologise for the delay occurred in the handling of this application.

I. SCOPE OF YOUR APPLICATION

You have been requesting the following:

'All documentation (including but not limited to all email correspondence, attendance lists, agendas, background papers, transcripts, recordings and minutes/notes) relating to the meeting between Thierry Breton and Huawei on 3rd December 2020'.

II. DOCUMENT(S) FALLING WITHIN THE SCOPE OF YOUR REQUEST

We have identified the following document as falling within the scope of your request:

- Briefing Note – Basis CAB 613 – Meeting with Huawei (**Document 1**);
- Report of the meeting with CEO of Huawei 24/11/2020 (**Document 2**).

¹ Official Journal OJ L 145, 31.5.2001, p. 43.

III. 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 Document 2 and partial access can be granted to Document 1. Full disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

A. Full Disclosure

Document 2 can be fully disclosed.

B. Partial Disclosure

(i) Protection of privacy and integrity of individuals

Full disclosure of the document is prevented by the exception concerning the protection of privacy and integrity of the individual outlined in Article 4(1)(b) of Regulation 1049/2001, since it contains the following personal data:

- the names/initials and contact information of Commission staff members not pertaining to the senior management;
- Names, functions and CV details of other natural persons.

Article 9(1)(b) of the Data Protection Regulation² 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 conclude that, pursuant to Article 4(1)(b) of Regulation 1049/2001, access cannot be granted to the personal data contained in the requested document, 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 public interest as regards the financial, monetary or economic policy of the Community or a Member State

Article 4(1)(a), fourth indent of Regulation 1049/2001 provides that the Commission ‘*shall refuse access to a document where disclosure would undermine the protection of the public interest as regards [...] the protection of the financial, monetary or economic policy of the Community or a Member State*’.

Parts Document 1 contain sensitive information relating to the positions of the EU and Member States on inter alia 5G security, the disclosure of which could affect their financial or economic policy, depending on the position they adopt vis à vis certain market actors. Disclosure of these parts would undermine the EU’s and the Members States’ public interest as regards their financial and economic policies.

² 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.

We therefore conclude that access to the Document 1 has insofar to be refused for the parts concerned, based on the exception relating to the protection of the financial, monetary or economic policy of the Community or a Member State as laid down in Article 4(1)(a), fourth indent of Regulation 1049/2001.

(iii) *Protection of public interest as regards international relations*

Article 4(1)(a), third indent of Regulation 1049/2001 provides that the Commission '*shall refuse access to a document where disclosure would undermine the protection of the public interest as regards [...] international relations*'.

Parts of the document are covered by the exception to the right of access laid down in Article 4(1)(a), third indent of Regulation 1049/2001, referring to 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 No 1049/2001, [...] calls for the exercise of particular care. Such a decision therefore requires a margin of appreciation*³. 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*⁴'.

Parts of Document 1 contain sensitive information on several areas pertaining to international relations between the EU and China, which were meant for internal use. There is a real and non-hypothetical risk that public disclosure of these parts would seriously harm the relations of the European Union with third countries, as its content could easily be misinterpreted and misused in a national or international context.

We therefore conclude that access to Document 1 has insofar to be refused for the parts concerned, based on the exception relating to the protection of international relations as laid down in Article 4(1)(a), third indent of Regulation 1049/2001.

(iv) *Protection of commercial interests*

Article 4(2), first indent of Regulation 1049/2001 provides that the Commission '*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.

Document 1 contains commercially sensitive information to this regard. These parts of Document 1 contain sensitive business information relating to business strategies, the competitive situation on the market and other commercial interests of companies, including intellectual property. There is a real and non-hypothetical risk that disclosure of these parts of the document could undermine and seriously affect the commercial interests of these companies.

We therefore conclude that access to this part of Document 1 has to be refused, based on the exception relating to the protection of commercial interests as laid down in Article 4(2), first indent of Regulation 1049/2001.

³ Judgment in *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 35

⁴ Judgment in *Council v Sophie in't Veld*, C-350/12 P, EU:C:2014:2039, paragraph 63

The exception of Article 4(2) of Regulation 1049/2001 referred to above applies, unless there is an overriding public interest in disclosure of the documents in question. Such an interest must be public and outweigh the harm caused by disclosure.

We have examined whether there could be an overriding public interest in disclosure, but that we have not been able to identify any such interest.

IV. DISCLAIMER AND RE-USE OF DOCUMENTS

Kindly pay attention to the following: You may reuse public documents, which have been produced by the European Commission or by public and private entities on its behalf, based on [Commission Decision 2011/833/EU of 12 December 2011 on the re-use of Commission documents \(OJ L 330, 14.12.2011, p. 39-42\)](#). You may reuse the enclosed redacted and not redacted documents free of charge for non-commercial and commercial purposes, provided that the source is acknowledged, that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume any liability stemming from the reuse.

Please note that the identified documents were drawn up for internal use under the responsibility of the relevant service of the Commission. They solely reflect the service's interpretation of the interventions made and do not set out any official position of the third parties to which the documents refers, which were not consulted on their content. They do not reflect the position of the Commission and cannot be quoted as such.

V. POSSIBILITY OF A CONFIRMATORY APPLICATION

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
Unit 'Transparency, Document Management & Access to Documents' (SG.C.1)
BERL 5/282
1049 Brussels
BELGIUM,

or by email to: sg-acc-doc@ec.europa.eu.

Yours sincerely,

Electronically signed

Roberto Viola

Enclosures: 2