



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

The Director-General

Brussels
 CNECT.R.4

Mr Alexander Fanta
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 Belgium
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Subject: Your application for access to documents – EASE 2024/5433

Dear Mr Fanta,

We refer to your email of 11 October 2024, wherein you make a request for access to documents pursuant to Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (hereinafter ‘Regulation 1049/2001’), which was registered on the same day under the above-mentioned reference number. We also refer to our holding reply, dated 4 November 2024, our reference Ares(2024)7794931, 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.

We apologise for the delay in our response.

1. SCOPE OF YOUR APPLICATION

Your application reads as follows:

*‘I am requesting documents which contain the following information:
 - Any document connected to a meeting between Commissioner Breton and Huawei on 3 December 2020. This is meant to include meeting minutes, as well as e-mails and follow-up communication. The request shall also include any communication connected to a call by a senior Huawei lobbyist to Commissioner Breton, such as the apology e-mail mentioned here and any further exchanges on the matter: [https://urldefense.com/v3/___https://www.politico.eu/article/huawei-thierry-breton-personal-phone-call/__;!!DOxrgLBm!Gus3LFroSwUwwpK_X8jo0frxgCAOaYbqxZQldPga3Tqde9ciIK7ZQS8VnNbcG2FIfAX4KUOn0tqB9hZ-wlD-qPlT7ReOXneV3S4T\\$](https://urldefense.com/v3/___https://www.politico.eu/article/huawei-thierry-breton-personal-phone-call/__;!!DOxrgLBm!Gus3LFroSwUwwpK_X8jo0frxgCAOaYbqxZQldPga3Tqde9ciIK7ZQS8VnNbcG2FIfAX4KUOn0tqB9hZ-wlD-qPlT7ReOXneV3S4T$)’*

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

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

- Briefing - Basis CAB 613-Meeting with Huawei, Ares(2020)7445072, (**Document 1**);
- Report of the meeting with CEO of Huawei 24/11/2020, (**Document 2**);
- Email dated October 21, 2020, Ares(2020)4741096, (**Document 3**);
- Email dated November 9, 2020, Ares(2020)4741096, (**Document 4**);
- Email dated December 11, 2020, Ares(2020)7537540, (**Document 5**);
- Attachment to the abovementioned email, Ares(2020)7537540, (**Document 6**);
- Email dated December 17, 2020, Ares (2020)7728594, (**Document 7**);
- Letter from the Cabinet of Commissioner Thierry Breton dated December 18, 2020, Ares(2020)7749720, (**Document 8**);
- Email dated December 18, 2020, Ares(2020)7806695, (**Document 9**);
- Attachment to the abovementioned email 'Attachment additional information to Commissioner Breton following meeting', Ares(2020)7806695, (**Document 10**);
- Email dated December 21, 2020, Ares(2020)7971681, (**Document 11**).

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 full access can be granted to Document 2, partial access can be granted to Document 1 and access must be refused to the remaining nine documents as their 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. Please note that the date indicated in the document's heading is a typo. The meeting was originally scheduled for November 24, 2020; however, it was later rescheduled to December 3, 2020.

B. Partial disclosure

(i) *Protection of privacy and integrity of individuals*

Full disclosure of Document 1 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 it contains the following personal data:

- Names and contact details 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 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

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,

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) 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 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 institutions shall refuse access to a document where disclosure would undermine the protection of the financial, monetary or economic policy of the Community or a Member State.

Parts of 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.

Consequently, the above-mentioned parts of Document 1 have been blanked out.

(iii) Protection of 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 which refers to '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"*². 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"*³.

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.

Consequently, the above-mentioned parts of Document 1 have been blanked out.

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.

² Judgment in *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 35

³ Judgment in *Council v Sophie in't Veld*, C-350/12 P, EU:C:2014:2039, paragraph 63

(iv) Protection of commercial interests

Parts of Document 1 are covered by the exception of Article 4(2) first indent of Regulation 1049/2001 which 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 the abovementioned document 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.

Consequently, the above-mentioned parts of Document 1 have been blanked out.

C. Non-disclosure

We regret to inform you that access to Documents 3-11 cannot be granted as disclosure is prevented by exception related to the protection of commercial interest as laid down in Article 4(2) first indent of Regulation 1049/2001.

Protection of commercial interest

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.

Documents 3-11 pertain to correspondence exchanged with Huawei before and after the meeting held on 3 December 2024. The documents provide exchanges that contain sensitive business information. The content of the correspondence reflects the nature of their collaboration and professional engagement.

Taking into account the view of the third party which was consulted on the disclosure, it is considered that a disclosure of the information contained in these documents would undermine the protection of the legal persons’ business secrets and strategy as it could be utilized by competitors, to the detriment of the legal persons concerned. Therefore, there is a real and non-hypothetical risk that disclosure of these documents would undermine and seriously affect the commercial interest of the legal entities.

Moreover, parts of Document 3-11 contain personal data, in particular names and functions of other natural persons. In view of this, its disclosure is prevented by the exception of Article 4(1)(b) of Regulation 1049/2001 for the reasons set out in Section A(i).

In light of the foregoing, access to Documents 3-11 must be completely refused.

We have considered whether partial access could be granted to these documents. However, partial access is not possible considering that the documents are covered in their entirety by the abovementioned exceptions of Article 4 of Regulation 1049/2001.

4. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exception laid down in Articles 4(2) 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 aforementioned documents, but we have not been able to identify such an interest.

5. REUSE OF DOCUMENTS

You may reuse public documents 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 Documents 1 and 2 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.

Please note that these documents were drawn up for internal use under the responsibility of the relevant Commission services. 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, which were not consulted on their content. They do not reflect the position of the Commission and cannot be quoted as such.

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 **by asking for a review via your portal⁴ account** (available only for initial requests submitted via the portal account), or via the following address:

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076

⁴ <https://www.ec.europa.eu/transparency/documents-request>

B-1049 Bruxelles

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

Yours sincerely,

Electronically signed

Roberto Viola

Enclosures: (3)