

Huawei EU Public Affairs Chaussée d'Etterbeek 180 1040 Brussels, Belgium

Executive Vice President Vestager European Commission Berlaymont building, Rue de la Loi 200 1049 Brussels, Belgium

Brussels, Friday 11th September 2020

Dear Executive Vice President Vestager, Cc: Director-Generals Roberto Viola and Kerstin Jorna, and Mr. Jørgensen

Re: draft security laws in Romania and Poland

In view of our forthcoming meeting, I am writing to you as regards recent legislative proposals in Romania and Poland in the field of 5G security, which aim to exclude Huawei because of its geographic origin.

Both Romania and Poland have signed with the U.S. a joint agreement or a memorandum of understanding on 5G security (MoU), which seeks to exclude suppliers on the basis of biased and ambiguous criteria targeting certain 5G suppliers because of their geographic origin.

Romania and Poland have proposed a pre-authorization regime for 5G equipment suppliers with conditions that are a blue print of the MoU. The Polish draft goes even further to include conditions pertaining to the existence of legislation protecting human rights and personal data. Both draft legislation cover all types of network equipment and software, without any limitations such as sensitive parts of 5G networks, as well as all technologies including an obligation to remove within five years all 3G and 4G legacy equipment installed by un-authorized suppliers.

These legislative proposals will reduce competition that will harm European industry, damage European economy, and weaken Europe's digital resilience.

We are planning huge investments in Europe, not through acquiring European start-ups, but by building production facilities and creating more jobs as a result. We have been present and trusted here in Europe for 20 years. By these measures and more, most people would consider us a European company. However, our plans of European investment are in danger because these proposals are predicated on several violations of EU law.

Huawei objects to these legislative proposals that are contrary to the fundamental principles of the EU.

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I have brought this matter to the attention of the Commission services supported by serious legal allegations as regards Romania and Poland violating their following fundamental EU obligations:

- Breach of the obligation in TFEU Article 4 for sincere cooperation since by implementing in their national legislation the substance of the MoU, Romania and Poland are favoring US national security priorities over EU policies.
- Departing from the approach retained by the EU 5G Toolbox, which aimed at ensuring a
 minimum level of coordination between Member States, with a view to ensuring that 5G
 security measures adopted by Member States are proportionate to a particular risk
 identified, are not predicated on biased and ambiguous criteria, while allowing the full
 benefit of 5G networks development.
- Breach of the principle of legal certainty and predictability. Rules of law must be clear and precise and the application of these rules must be predictable for undertakings concerned. Legislation must enable those concerned to know precisely the extent of the obligations which are imposed on them.
- Creation of special rights to the benefit of specific suppliers depriving certain Member States from the benefit of increased competition.
- Breach of several rules and policies governing the provision of electronic communications networks and services. This includes notably an encroachment on the principle of freedom to provide networks and services, of the non-retroactive affectation of spectrum conditions including the choice of network equipment, of the right to an effective appeal against decisions affecting operators' activities, and of the obligation to prohibit special and exclusive rights.
- Violation of the non-discrimination and proportionality principles by adopting legislations excluding suppliers because of their geographic origin.
- Violation of principle of free movement of goods as Huawei is a supplier established in the EU.
- Violation of the right to property as a result of the obligation to remove 3G and 4G legacy equipment.
- Violation of World Trade Organization law because the draft legislation will result in a discrimination between products based on geographic origin.

Huawei understands the need to deliver security of 5G networks. Huawei adheres to the strictest security standards such as proportionate measures developed recently in Germany according to risk identification without discrimination because of their geographic origin. I look forward to discussing this matter with you at our forthcoming meeting.

