Subject: Your confirmatory application for access to documents under Regulation (EC) No 1049/2001 – GESTDEM 2019/5542

Dear [Name],

I refer to your letter of 28 October 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 documents (hereafter ‘Regulation (EC) No 1049/2001’). I also refer to the clarifications provided in your email of 19 November 2019.

In your initial application of 30 September 2019, addressed to the Directorate-General for Communications Networks, Content and Technology, you requested access to the following documents:

‘1. Document that services in satellite communications networks and services that use flag State ships of M[ember] S[tates] in international seas, are not subject to the regulation of national, European and international laws accepted by the Union, which [you] cite above [in your request]’; and

‘2. Document that services in satellite communications networks and services that use flag State ships of M[ember] S[tates] in international seas, are not subject to the EU Data Processing law with the provisions of publicly available electronic communication services in public communication networks in the Community (all M[ember] S[tates])’.

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In its initial reply of 15 October 2019, the Directorate-General for Communications Networks, Content and Technology noted that the documents requested were the same documents falling within the scope of three previous applications that you had submitted on 16 January, 20 May and 27 May 2019 under the reference numbers Gestdem 2019/0557, 2019/2941 and 2019/3206.

The Directorate-General for Communications Networks, Content and Technology further stressed that in the framework of your new request, you did not put forward any change in the legal or factual circumstances warranting a review of the European Commission’s decision in respect to the requested documents.

Against this background, the Directorate-General for Communications Networks, Content and Technology referred you to the following previous decisions:

1) Its initial decision of 5 March 2019, registered under reference Ares(2019)1492633 and the related confirmatory decision of the European Commission, under C(2019)3871 final (GestDem 2019/0557);

2) Its initial decision of 25 June 2019, registered under reference Ares(2019)4028383 and the related confirmatory decision of the European Commission, under C(2019)5341 final (GestDem 2019/2941); and


Consequently, the Directorate-General for Communications Networks, Content and Technology assessed that it was still not in a position to meet your request in light of the current legal and factual situation.

Moreover, the Directorate-General for Communications Networks, Content and Technology referred you to its two detailed replies consisting of a pre-closure letter and a closure confirmation, sent to you in the framework of your complaint CHAP(2016)3259 , as well as to the European Ombudsman’s decision concerning your complaint registered under reference 1994/2018/JF.

Furthermore, the Directorate-General for Communications Networks, Content and Technology referred you to its letter of 16 August 2019, registered under reference Ares(2019)5285782 regarding the termination of its correspondence with you on the above-mentioned matter.

In your confirmatory application, you reiterate your request and request a review of the position of the Directorate-General for Communications Networks, Content and Technology of 15 October 2019.
However, you do not put forward any change in the legal or factual situation either in your confirmatory application, or in your subsequent letter of clarifications, which would warrant a renewed search since the confirmatory decision of 22 July 2019. Besides, the latter already reiterated its previous statement confirming the lack of documents held by the institution corresponding to your request.

Against this background, I have examined whether there are any new circumstances that would justify a modification of the position of the European Commission regarding your request.

After a careful assessment of the situation, I conclude that the relevant legal and factual circumstances have remained unchanged since the Decision of the European Commission of 17 May 2019. As already reiterated in the successive decisions of the European Commission of 9 and 22 July 2019, there are no documents held by the institution that fall within the scope of your request. Therefore, I refer you to the above mentioned European Commission Decision of 17 May 2019, and in particular to the explanations provided therein, regarding the legal framework surrounding the context of your request and justifying the lack of existing documents.

Consequently, the conclusion pursuant to which the European Commission is unable to handle your request remains justified in light of the current legal and factual situation.

In the framework of your confirmatory application and your subsequent clarifications, you also make a series of allegations against the Directorate-General for Communications Networks, Content and Technology that are not addressed within the scope of the present decision. Indeed, this decision is circumscribed to the framework of Regulation (EC) No 1049/2001.

Nevertheless, I would like to stress in that respect, that the European Ombudsman did not find any maladministration from the European Commission regarding on how it handled your complaint about alleged infringements of national, international and EU laws by Croatia. In fact, the European Ombudsman found that the European Commission had provided you with sufficient explanations as to why it could not deal with alleged violations of legislation other than that of the EU. Moreover, the European Ombudsman noted that you were able to seek redress with competent national competition authorities and administrative courts, a fact that you did not dispute. Furthermore, the European Ombudsman stressed that the European Commission had dealt with four requests for public access to documents from you, having also replied to your subsequent confirmatory applications.

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Against this background, please note that the European Commission will be compelled in the future, to discontinue, in the interests of good administration, any correspondence with you on this subject, in the absence of any established change of factual and legal circumstances.

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

Yours sincerely,