



EUROPEAN COMMISSION

Brussels, 5.7.2021
C(2021) 5119 final

Mr Max Bank
LobbyControl
Am Justizzentrum 7 50939 Cologne
Germany

**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 – GESTDEM
2021/0809**

Dear Mr Bank,

I am writing in reference to your email of 10 March 2021, registered on the 24 March 2021, by which you lodge 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’).

Please accept our apologies for the delay in replying to your request.

In your initial application of 16 February 2021, you requested access to, I quote

‘ - All documents - including but not limited to minutes, (hand-written) notes, audio recordings, verbatim reports, operational conclusions, lines to take, e-mails, and presentations - related to the meetings of the members of the Regulatory Scrutiny Board (RSB), i.e. Veronica Gaffey, Mona Björklund, Dorota Denning, Michael Gremminger, Andreas Kopp, Bernard Naudits, have held with interest representatives on the Digital Markets Act (including previous iterations of the proposals such as New Competition Tool and Markets Investigation Tool) since 01 January 2020 until 31 December 2020;

- All correspondence (i.e. any emails, correspondence, telephone call notes, and/or text messages including WhatsApp exchanges) between members of the Regulatory Scrutiny Board (RSB), i.e. Veronica Gaffey, Mona Björklund, Dorota Denning, Michael Gremminger, Andreas Kopp, Bernard Naudits, and interest representatives on the Digital

¹ OJ L 345, 29.12.2001, p. 94.

² OJ L145, 31.05.2001, p. 43.

Markets Act (including previous iterations of the proposals such as New Competition Tool and Markets Investigation Tool) since 01 January 2020 until 31 December 2020.’

By letter of 23 February 2021, Directorate A ‘Strategy, Better Regulation & Corporate Governance’ of the Secretariat-General of the European Commission on behalf of the Regulatory Scrutiny Board, informed you that it was not able to identify any documents as falling within the scope of your request.

In your confirmatory application, you question the absence of any documents.

You reiterated that you are interested in information on meetings of the members of the Regulatory Scrutiny Board with organisations and self-employed individuals regarding the topic of the Digital Markets Act (including previous iterations of the proposals such as New Competition Tool and Markets Investigation Tool). You further expanded your request to include ‘participation in conferences and events (Offline and online) since 01 January 2020 until 31 December 2020’.

Against this background, the European Commission has carried out a renewed, thorough search for the documents requested. Following this renewed search, I confirm that the Commission does not hold any documents that would correspond to the description given in your application at the date you submitted your confirmatory request.

Please note that the list of meetings of the Chair of the Regulatory Scrutiny Board with organisations and self-employed individuals is publicly available³. The Chair of the Regulatory Scrutiny Board is an official of the European Commission having the status of Director-General and should therefore make public information on meetings held with organisations or self-employed individuals on issues relating to decision-making and policy implementation in the Union in accordance with the Commission decision 2014/838/EU, Euratom of 25 November 2014⁴. Please note that the same obligation does not apply to lower-ranking officials, such as the remaining members of the Regulatory Scrutiny Board.

Furthermore, I would like to specify that the members of the Regulatory Scrutiny Board do not discuss individual files at meetings, conferences or other events. At such occasions, they discuss the role of the Board in general terms and make presentations on, for instance, the Board’s annual report.

Board members did not have meetings with external stakeholders on the specific issue in which you are interested, and did not participate in conference and events on the topic. Therefore, there are no related documents.

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<http://ec.europa.eu/transparencyinitiative/meetings/meeting.do?host=242a8924-48a5-4983-b75f-fab577a950b7>

4

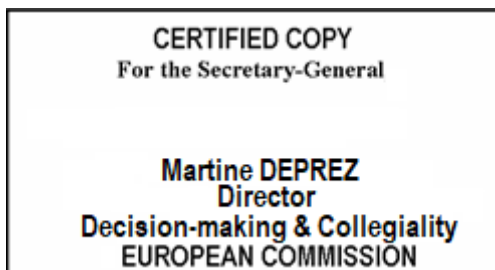
Commission decision 2014/838/EU, Euratom of 25 November 2014 on the publication of information on meetings held between Directors-General of the Commission and organisations or self-employed individuals, L 343/19, 28.11.2014.

Indeed, as specified in Article 2(3) of Regulation (EC) No 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution.

Given that the European Commission does not hold any such documents corresponding to the description given in your application, it is not in a position to fulfil your request.

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
Ilze JUHANSONE
Secretary-General