

Christine Lagarde
President

ECB-UNRESTRICTED

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Frankfurt, 29 September 2020

LS/CL/20/263

Confirmatory application for public access to ECB documents

Dear Ms Edde,

On 10 August 2020, the ECB received your confirmatory application requesting that the Executive Board reconsider the decision of the Director General Secretariat of 24 July 2020¹ not to disclose the document identified in relation to your application for access to documents of 22 May 2020. To recall, the ECB identified one document in relation to point (2) of your application on *"documents in connection with the ECB's purchase of €112 million in the bonds of CPI Property Group as part of the PEPP. I wish to seek the following: ... 2) Any internal notes made about the bonds and legal judgements about the ultimate owner of the bonds issuer, CPI Property Group"*, namely a confidential risk assessment of the issuer group CPI Property Group.

On 7 September 2020, in line with Article 8(2) of Decision ECB/2004/3² and owing to an exceptional workload, the ECB extended the stipulated time limit for replying by an additional 20 working days.

In line with the requirements of Decision ECB/2004/3, the Executive Board has given careful consideration to your confirmatory application, as well as to the assessment made and the decision taken by the Director General Secretariat in response to your initial request.

Following this review, the Executive Board has decided to uphold the decision of the Director General Secretariat. The Executive Board reiterates that the confidential risk assessment of CPI Property Group, which was identified as a document falling within the scope of point (2) of your

¹ See the letter of the Director General Secretariat of 24 July 2020 (LS/PS/2020/25).

² Decision ECB/2004/3 of 4 March 2004 on public access to European Central Bank documents (OJ L 80, 18.3.2004, p. 42).

request, cannot be disclosed, in full or in part, since disclosure over and beyond the reference to its content would undermine the interests protected under the second indent of Article 4(1)(a) of Decision ECB/2004/3 (*"the protection of the public interest as regards the financial, monetary or economic policy of the Union or a Member State"*).

In your confirmatory application you contend that the reason underpinning non-disclosure of the identified document does not appear valid in the light of your professional experience (as a former investment professional). The Executive Board does not consider the argument in your confirmatory application sufficient to call into question the ECB's reasoning and the grounds given for the non-disclosure of the requested document.

The Executive Board wishes to underline that the Director General Secretariat's letter of 24 July 2020 provided comprehensive background information and explained in detail the reasons why the identified document could not be disclosed.

The following paragraphs explain the Executive Board's decision.

Protection of the public interest as regards the financial, monetary or economic policy of the Union or a Member State

Pursuant to the second indent of Article 4(1)(a) of Decision ECB/2004/3, the ECB shall refuse access to documents where disclosure would undermine the protection of the public interest as regards the financial, monetary or economic policy of the Union. The disclosure of the requested document may seriously compromise the effectiveness of the Eurosystem's monetary policy implementation measures under the corporate sector purchase programme (CSPP) and the temporary pandemic emergency purchase programme (PEPP) and their monetary policy objectives, distort price discovery and impair market functioning, creating serious risks to the monetary policy transmission mechanism and the outlook for the euro area.

There are two aspects to which the Executive Board would like to draw your attention once again:

First, in the context of the ECB's risk control framework for corporate bond purchases under the CSPP and the PEPP, due diligence procedures and credit risk mitigation measures, which are implemented on an ongoing basis, are internal Eurosystem procedures of a confidential nature. The identified confidential risk assessment of CPI Property Group was undertaken as part of these procedures and therefore contains sensitive information on the due diligence and credit risk mitigation criteria used by the Eurosystem in its day-to-day monetary policy operations. As a consequence, the disclosure of this information would lead market participants to draw inferences about future Eurosystem purchases under its asset purchase programme (APP) and to adjust their own behaviour according to assumptions made on the basis of the information made available.

Moreover, as emphasised in the Director General Secretariat's letter, CSPP and PEPP purchases are intended to have a positive effect on all targeted asset categories. Since market participants are

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not familiar with the individual assets considered for purchase by the ECB and Eurosystem national central banks (NCBs), they will tend to invest broadly in the entire categories targeted. However, granting market participants access to detailed information regarding the CSPP and PEPP portfolios, such as the information contained in the assessment of CPI Property Group, could introduce undue volatility and distort price discovery in the market, while compromising the effectiveness of the intervention measures and, potentially, their monetary policy objective.³

Second, disclosure of risk assessments, such as the one identified concerning CPI Property Group, may lead to market fragmentation and undermine the level playing field on which issuers and originators operate, thereby jeopardising the ECB's intention of minimising the impact of the purchase programmes on price discovery and market functioning.

The minimisation of unintended consequences is key to ensuring a market-neutral implementation of the CSPP and PEPP. In this context, market neutrality means that, while the ECB aims to affect prices, it does not wish to suppress the price discovery mechanism and impair market functioning. To that end, purchases under the CSPP and PEPP follow a benchmark, which is designed to be neutral in the sense that it reflects proportionally all outstanding CSPP/PEPP-eligible corporate bonds.⁴ The structure of the benchmark (and the associated limit framework) is aimed at ensuring the build-up of a diverse portfolio and avoiding undue market distortions. In addition, the ECB closely monitors the impact of its operations on market liquidity and collateral availability.

³ See, in this regard, *Versorgungswerk v ECB*, T-376/13, ECLI:EU:T:2015:361, paragraph 80 ("... disclosure of information about the method used under the [Securities Markets Programme (SMP)] could undermine intervention measures having an objective which is identical or similar to the one pursued through the SMP. These types of programmes are aimed at encouraging market participants to invest in a category of government bonds, possibly even before the ECB and the Eurosystem NCBs purchase any, in order to take advantage of the price trends triggered by those purchases. They are liable to have a positive effect on all of the bonds in the category targeted. Since the market participants are not familiar with the bonds preferred by the ECB and the Eurosystem NCBs, they will tend to want to invest broadly in the entire category targeted. By contrast, if the market participants were to be granted access to the detailed, broken down information contained in Annexes A and B to the Exchange Agreement, the effectiveness of the intervention measures and, ultimately, the monetary policy, would risk being affected, as would the internal finances of the ECB and the Eurosystem NCBs. In that scenario, the market participants would tend to want to establish prognoses in order to determine more specifically the type of government bonds purchased by the ECB and the Eurosystem NCBs and to concentrate their acquisitions on those types of bonds. On the one hand, there is a risk that it would lead to higher prices for the types of bonds identified by the market participants as liable to be purchased by the ECB and the Eurosystem NCBs. Since those bonds would in fact fit in with the preferences of the ECB and the Eurosystem NCBs, both might be led either to purchase those types of bonds at higher prices or to purchase other bonds not fitting in with their preferences. On the other hand, the ECB and the Eurosystem NCBs could be led to purchase bonds of a type other than the category targeted, in order to encourage market participants to invest in all of the bonds in that category, instead of concentrating on certain types of bonds").

⁴ For information regarding the PEPP, see "Pandemic emergency purchase programme (PEPP)" on the ECB's website, available at <https://www.ecb.europa.eu/mopo/implement/pepp/html/index.en.html>; and for information regarding the CSPP, including a semi-annual breakdown of the CSPP portfolio and CSPP-eligible corporate bond universe by economic sector, credit rating, and country of risk, see "Asset purchase programmes" on the ECB's website, available at <https://www.ecb.europa.eu/mopo/implement/omt/html/index.en.html>.

For the above reasons, the Executive Board maintains that the disclosure of the requested document would harm the efficiency of the two above-mentioned purchase programmes and jeopardise the achievement of the desired monetary policy accommodation, which ultimately may negatively affect the sustained adjustment in the path of inflation rates to levels below, but close to, 2% in the medium term. The efficient implementation of the APP, including the CSPP, is important in order to support a sustained adjustment in the path of inflation that is consistent with the ECB's primary objective of price stability. The successful implementation of the PEPP is also critical to an effective monetary policy transmission mechanism aimed at delivering the favourable financial conditions that are necessary to support the economy in view of the severe risks to the euro area outlook posed by the coronavirus (COVID-19) pandemic.⁵

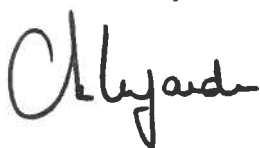
Moreover, in relation to partial access to the identified document, the Executive Board reiterates that, because of the amount of confidential information it contains, it would not be possible to provide a document with meaningful content after the redaction of the protected information. Consequently, the ECB has come to the conclusion that the document is covered in its entirety by the invoked exception under Article 4(1)(a) of Decision ECB/2004/3 (*"the protection of the public interest as regards the financial, monetary or economic policy of the Union or a Member State"*).

Taking into account the points above, the Executive Board confirms the decision of the Director General Secretariat that access to the identified document under point (2) of your application on *"Any internal notes made about the bonds and legal judgements about the ultimate owner of the bonds issuer, CPI Property Group"* cannot be granted, in full or in part.

Remedies

Please be informed that, as set forth in Article 8(1) of Decision ECB/2004/3, in the event of total or partial refusal, the applicant may have recourse to the remedies available under Articles 228 and 263 of the Treaty on the Functioning of the European Union.

Yours sincerely,



⁵ See Decision (EU) 2020/440 of the European Central Bank of 24 March 2020 on a temporary pandemic emergency purchase programme (ECB/2020/17).