



EUROPEAN CENTRAL BANK

EUROSYSTEM

Directorate General Secretariat

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Ms Valentina Pop

ask+request-927-4d8d2650@asktheeu.org

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LS/PvdH/13/42

Request for public access to ECB documents

Dear Ms Pop,

On 28 October 2013 the European Central Bank (ECB) received your request for access to “*all contracts with Oliver Wyman as well as the tender specifications for each of them and the reasoning why Oliver Wyman was selected over its competitors, if there were any*”. On 12 November 2013, in line with Article 7.3 of Decision ECB/2004/3 on public access to ECB documents¹ (hereinafter Decision ECB/2004/3), the ECB extended the stipulated time limit by which it was to reply to your request by an additional 20 working days, as the request required third-party consultation.

We would like to inform you that the ECB entered into three contracts with Oliver Wyman following procurement procedures which, based respectively on Articles 6(1)(b), 6(1)(c) and 29 of Decision ECB/2007/5 laying down the Rules on Procurement² (hereinafter Decision ECB/2007/5), were carried out as negotiated procedures without publication of a notice. One of these contracts, relating to financial advisory services relating to a Member State banking sector, was extended on two occasions, namely on 23/07/2012 and on 16/10/2012, and expired on 31/12/2012 (procurements 19051/FS/2011 and 24031/M/MOA/2011)³. The other two contracts are still active and relate to the provision of services concerning the establishment of the Single Supervisory Mechanism (SSM) (procurement 26133/F/2013)⁴.

¹ OJ L 80, 18.3.2004, p. 42, as amended by Decision ECB/2011/6 of 9 May 2011, L 158, 16.6.2011, p. 37.

² OJ L 184, 14.7.2007, p. 34, as amended by Decision ECB/2009/2 (OJ L 51, 24.2.2009, p. 10), Decision ECB/2010/8 (OJ L 238, 9.9.2010, p. 14) and Decision ECB/2012/10 (OJ L 178, 10.7.2012).

³ See list of contracts awarded without publication of a notice in the year 2012, available on the ECB's website - <http://www.ecb.europa.eu/ecb/jobsproc/proc/pdf/contractsawardedwithoutpublicationofnotice2012.pdf?c9f76e47ff79fa4cad79aabdc92b95f>

⁴ See press release regarding the appointment of Oliver Wyman as consultant for the Comprehensive Assessment of Supervised Banks - <http://www.ecb.europa.eu/press/pr/date/2013/html/pr130924.en.html>

ECB-UNRESTRICTED

Following a thorough assessment of your request in line with the requirements established by Decision ECB/2004/3, a comprehensive list of documents relevant to your application was established (please refer to the table annexed to this letter).

Taking into account the volume of the documentation, the table annexed further shows for each of the identified documents whether you have been granted access and the type of access (full, partial or non-disclosure) and, if applicable, on which exceptions foreseen in Article 4 of Decision ECB/2004/3 non-disclosure or partial disclosure of these documents is based.

We should like to provide you below with detailed explanations of the applicability of these exceptions to your request.

In line with Article 4(1)(b) of Decision ECB/2004/3, all disclosed documents have been anonymised. Personal data is protected by Article 4(1)(b) of Decision ECB/2004/3 in conjunction with Article 8 of Regulation No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Union institutions and bodies and on the free movement of such data⁵. One of the conditions stipulated by Article 8(b) of Regulation No 45/2001 concerning the transfer of personal data to recipients other than Union institutions and bodies, subject to Directive 95/46/EC, is that the necessity of having such personal data transferred is established by the recipient. Therefore, relevant personal data of ECB staff members and Oliver Wyman representatives, together with any information that would make them identifiable, has not been disclosed.

Furthermore, any information that could undermine the protection of the financial, monetary or economic policy of the Union or a Member State (Article 4.1 (a), second indent of Decision ECB/2004/3) and the stability of the financial system in the Union or in a Member State (Article 4.1 (a), seventh indent of Decision ECB/2004/3) has not been disclosed.

This is the case for the information contained in the documents relating to the purpose and scope of financial advisory services provided by Oliver Wyman as a result of procurements 19051/FS/2011 and 24031/M/MOA/2011. Their disclosure to the public at large would reveal the elements taken into account by the ECB in the conduct of its policies in the context of the crisis management in a specific Member State and in the management of its exposure to that Member State's banking sector. Thus such disclosure could negatively affect the ECB's capacity to react and could undermine the effectiveness of its policies applied in the context of crisis management relating to certain euro area Member States and therefore jeopardise the stability of the banking sectors of these Member States or the euro area as a whole.

The second mentioned exception is warranted in particular in the context of the provision of services to support the preparation and implementation of the comprehensive assessment of the significant banks that will be directly supervised by the ECB, which is a necessary step in the preparations of the ECB for the commencement of the SSM. The successful conclusion of this comprehensive assessment is vital to

⁵ OJ L 8, 12.1.2001, p. 1.

financial stability in the European Union, as a failure to make the necessary progress in this respect could result in adverse consequences for Member States and their financial sectors. In order to protect the integrity of this exercise, details concerning the conduct of the comprehensive assessment, included in the requested documents, must remain protected for the time being. Providing such details in advance would risk adversely impacting the outcomes of the exercise, undermining its credibility and thereby negatively affecting the successful start of the SSM, with potentially adverse consequences for financial stability in the European Union.

Moreover, and in line with the exception provided by Article 4(2), first indent of Decision ECB/2004/3, all information that if disclosed would undermine the protection of the commercial interests, including intellectual property, of Oliver Wyman and of other competitors in the above-mentioned procurement procedures has not been disclosed. It is noted in this respect and in reference to Oliver Wyman's offers, that Article 4(1)(c) of Decision ECB/2004/3 in conjunction with Article 19(5) of Decision ECB/2007/5 establishes a principle of confidentiality to be applied to the information provided by the tenderers in procurement procedures. This provision is intended to safeguard commercial interests in the information provided by tenderers. Indeed, Decision ECB/2007/5 does not allow the successful tenderer's documents to be disclosed to the unsuccessful tenderers, with the exception of the name of the successful tenderer as well as the key characteristics and relative advantages of its offer and only in cases where the release of such information would not affect other suppliers' legitimate commercial interests, hinder application of the law or otherwise be contrary to the public interest (see Article 28(3) and (4) of Decision ECB/2007/5).

Thus, this exception relating to commercial interests, including intellectual property, protects the methodologies and processes used and developed over a number of years by Oliver Wyman and the business-related information on its pricing, on agreed liability clauses and on associated subcontractors. In particular, the above mentioned methodologies, which translate into very specific processes, ideas and know-how, are described in a detailed manner and constitute a unique approach and business concept developed by this firm. They are regarded as a personal creation with a certain level of individuality and are therefore protected by intellectual property rights. The disclosure of such information would undermine the commercial interest of Oliver Wyman by revealing essential business information to the market and by allowing such information to be used by competitors, weakening Oliver Wyman's ability to compete fairly in similar future tenders by giving it a competitive disadvantage relative to other competitors. The above-mentioned protected information is contained in Oliver Wyman's offers, in the evaluation matrixes and consequently, as the winning tenderer, in some elements of the final contracts. Disclosure of such information would undermine the commercial interests of the company, and there is no overriding public interest justifying a disclosure. In the case of the offers, disclosure has been granted to those parts that contain general information on Oliver Wyman's corporate organisation.

In the case of the evaluation matrixes, these contain, in addition to information related to Oliver Wyman, information related to the evaluation and scoring of the unsuccessful tenderers in certain domains such as price, quality of the proposed teams, approaches, etc. Such information has not been disclosed as the

ECB-UNRESTRICTED

comparative evaluation could affect the other tenderers' reputation in the market and consequently their commercial interests, and there is no overriding public interest justifying such disclosure.

Finally, the conflict of interest policies agreed in the contracts relating to the establishment of the SSM have only been partially disclosed as they could undermine Oliver Wyman's commercial interests if disclosure was to be granted beyond the basic procedures that Oliver Wyman routinely implements in this respect. The additional conflict of interest procedures set restrictions to Oliver Wyman's activities that, if publicly available, would make competitors aware of business opportunities that Oliver Wyman would not be able to pursue. Besides that, they are competitively sensitive as they are precautions that allow Oliver Wyman to differentiate themselves from other competitors. Also in that which regards these documents there is no overriding public interest that would justify their disclosure.

We would like to draw your attention to Article 10 of Decision ECB/2004/3, which states that *"documents released [...] shall not be reproduced or exploited for commercial purposes without the ECB's prior specific authorisation. The ECB may withhold such authorisation without stating reasons"*.

For the sake of good order, please note that Article 7(2) of Decision ECB/2004/3 provides that *"in the event of total or partial refusal, the applicant may, within 20 working days of receiving the ECB's reply, make a confirmatory application asking the ECB's Executive Board to reconsider its position"*.

Yours sincerely,



Pierre van der Haegen
Director General Secretariat



Roman Schremser
Senior Adviser Secretariat

ANNEX

19051/FS/2011			
	Document	Disclosure	Applicable exceptions under ECB/2004/3
1.	Evaluation Matrix of OW bid	Partial disclosure	Article 4.1 (b) – personal data Article 4.2, first indent (commercial interests) Article 4.1 (a), second (financial, monetary or economic policy of a Member State) and seventh intends (stability of the financial system of a Member State/Union)
2.	Contract	Partial disclosure	Article 4.1 (a), second (financial, monetary or economic policy of a Member State) and seventh intends (stability of the financial system of a Member State/Union) Article 4.1 (b) – personal data Article 4.2, first indent (commercial interests)
	Annex 1.1 - Request for a proposal	Partial disclosure	Article 4.1 (a), second (financial, monetary or economic policy of a Member State) and seventh intends (stability of the financial system of a Member State/Union) Article 4.1 (b) – personal data
	Annex 1.2 - Contractor's offer	Partial disclosure	Article 4.1 (a), second (financial, monetary or economic policy of a Member State) and seventh intends (stability of the financial system of a Member State/Union) Article 4.1 (b) – personal data Article 4.2, first indent (commercial interests, including intellectual property)
	Annex 2 - ECB house rules for external staff	Disclosure	-
	Annex 3 - List of Subcontractor Contractors	Partial disclosure	Article 4.2, first indent (commercial interests)
	Annex 4 - Release letter	Partial disclosure	Article 4.2, first indent (commercial interests)

ECB-UNRESTRICTED

24031/M/MOA/2011			
3.	Letter confirmation of the extension	Partial disclosure	Article 4.1 (a), second (financial, monetary or economic policy of a Member State) and seventh intends (stability of the financial system of a Member State/Union) Article 4.1 (b) – personal data
4.	Offer of OW	Partial disclosure	Article 4.1 (a), second (financial, monetary or economic policy of a Member State) and seventh intends (stability of the financial system of a Member State/Union) Article 4.1 (b) – personal data Article 4.2, first indent (commercial interests, including intellectual property)
5.	Letter requiring second extension	Partial disclosure	Article 4.1 (b) – personal data
26133/F/2013			
6.	Framework agreement (Lot 1)		
	Contract	Partial disclosure	Article 4.1 (b) – personal data Article 4.1 (a), second (financial policy of a Member State) and seventh intends (stability of the financial system of a Member State/Union) Article 4.2, first indent (commercial interests)
	Annex 1.1 - Request for a proposal (Lots 1 and 2)	Partial disclosure	Article 4.1 (b) – personal data Article 4.1 (a), second (financial policy of a Member State) and seventh intends (stability of the financial system of a Member State/Union)
	Annex 1 - Specifications	Partial disclosure	Article 4.1 (a), second (financial policy of a Member State) and seventh intends (stability of the financial system of a Member State/Union)
	Annex 2 - Tenderers Statement	Disclosure	-
	Annex 3A - Draft contract (for Lot 1)	Partial disclosure	Article 4.1 (a), second (financial policy of a Member State) and seventh intends (stability of the financial system of a Member State/Union) Article 4.1 (b) – personal data
	Annex 4A and 4B- Price tables (for Lots 1 and 2)	Disclosure	-

ECB-UNRESTRICTED

	Annex 5 - Supplementary rules for procurement procedures carried out in accordance with Article 29 of Decision ECB/2007/5	Disclosure	-
	Questions and answers	Partial disclosure	Article 4.1 (b) – personal data Article 4.1 (a), second (financial policy of a Member State) and seventh intends (stability of the financial system of a Member State/Union)
	Annex 1.2 - Contractor's offer (filled by OW)	Partial disclosure	Article 4.1 (a), second (financial policy of a Member State) and seventh intends (stability of the financial system of a Member State/Union) Article 4.1 (b) – personal data Article 4.2, first indent (commercial interests, including intellectual property)
	Annex 2 - ECB house rules for external staff	Disclosure	-
	Annex 3 - Contractor's conflict of interest policies and procedures including initial contracts overview	Partial disclosure	Article 4.2, first indent (commercial interests)
7.	Order for the Provision of Services - Lot 1	Partial disclosure	Article 4.1 (b) – personal data Article 4.1 (a), second (financial policy of a Member State) and seventh intends (stability of the financial system of a Member State/Union) Article 4.2, first indent (commercial interests)
8.	Framework agreement - Lot 2		
	Contract	Partial disclosure	Article 4.1 (a), second (financial policy of a Member State) and seventh intends (stability of the financial system of a Member State/Union) Article 4.2, first indent (commercial interests)
	Annex 1.1: Request for a proposal (same document as Lot 1, with the exception of the Draft contract (for Lot 2))	Partial disclosure	Article 4.1 (a), second (financial policy of a Member State) and seventh intends (stability of the financial system of a Member State/Union) Article 4.1 (b) – personal data
	Annex 1.2 - Contractor's offer (filled by OW)	Partial disclosure	Article 4.1 (a), second (financial policy of a Member State) and seventh intends (stability of the financial system of a Member State/Union) Article 4.1 (b) – personal data Article 4.2, first indent (commercial interests, including intellectual property)

ECB-UNRESTRICTED

	Annex 2 - ECB house rules for external staff (same document as Lot 1)	[see document in Lot 1 framework agreement]	
	Annex 3 - Contractor's conflict of interest policies and procedures including initial contracts overview (same document as Lot 1)	[see document in Lot 1 framework agreement]	
	Questions and answers (same documents as Lot 1)	[see document in Lot 1 framework agreement]	
9.	Order for the Provision of Services - Lot 2	Partial disclosure	Article 4.1 (b) – personal data Article 4.1 (a), second (financial policy of a Member State) and seventh intends (stability of the financial system of a Member State/Union) Article 4.2, first indent (commercial interests)
10.	Evaluation Report (for Lot 1 and 2)	Partial disclosure	Article 4.2, first indent (commercial interests, including intellectual property)