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President

ECB-UNRESTRICTED

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31 October 2018  
Reference: LS/MD/18/347

### Confirmatory application for public access to ECB documents

Dear Mr Jourdan,

Thank you for your application of 3 September 2018 requesting the Executive Board of the European Central Bank (ECB) to review the position of the ECB and to grant access to the *"list of securities held under the CBPP3 and ABSPP (ISIN number, issuer name, maturity and coupon rate)"*.

On 26 September 2018, in line with Article 8(2) of Decision ECB/2004/3 on public access to ECB documents<sup>1</sup> (referred to in this letter as "Decision ECB/2004/3") and owing to an exceptional workload, the ECB extended the stipulated time limit for replying by an additional 20 working days.

In line with Article 8(2) of Decision ECB/2004/3, the Executive Board has given careful consideration to your confirmatory application, to the assessment made, and to the decision taken in response to your initial request. The Executive Board notes that the internal database containing the requested data on ABSPP and CBPP3 (the requested document) remains subject to the exception provided for in the second indent of Article 4(1)(a) (*"the protection of the public interest as regards the (...) monetary (...) policy of the Union"*). Following its review, the Executive Board has decided that access cannot be granted (in full or in part) to the requested document.

The Executive Board wishes to underline that the Director General Secretariat's letter of 28 August 2018 provided you with comprehensive background information on the two purchase programmes and explained in detail why the requested document could not be disclosed.

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<sup>1</sup> Decision ECB/2004/3 of 4 March 2004 on public access to European Central Bank documents (OJ L 80, 18.3.2004, p. 42), as last amended by Decision ECB/2015/1 (OJ L 84, 28.3.2015, p. 64).

This letter provides a further thorough assessment of the reasons why the Executive Board, having considered the ECB's initial assessment and the arguments submitted in your confirmatory application, is upholding the decision to refuse access to the requested document.

*The second indent of Article 4(1)(a) of Decision ECB/2004/3 – "the financial, monetary or economic policy of the Union or a Member State"*

The Executive Board considers that none of the general arguments in your confirmatory application can call into question the ECB's reasoning and the arguments put forward as justification for the non-disclosure of the requested document.

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 monetary policy of the Union.

First, the disclosure of detailed, broken down data on the securities held under the ABSPP and the CBPP3 (ISIN number, issuer name, maturity and coupon rate) would lead market participants to draw inferences about the Eurosystem holdings and adjust their own behaviour according to prognoses established on the basis of the information made available. The distribution of purchases across issuers/originators and other dimensions in fact mainly reflects the market conditions at the time of the purchases and the intention to maximise the impact of interventions on the stance and general credit conditions, while minimising distortions in market prices. This notwithstanding, disclosure of such information may lead to market fragmentation and undermine the level playing field among issuers and originators, thereby jeopardising the ECB's aim of minimising the impact of the implementation of the purchase programmes on the functioning of the relevant markets. The disclosure of the names of issuers of covered bonds and originators of asset-backed securities effectively bought is very likely to cause an increased differentiation in spreads in favour of those issuers/originators whose financial instruments have been purchased by the Eurosystem. Disclosure of the precise composition of the ABSPP and the CBPP3 portfolios might, for example, be perceived by the market as indicating a differentiation between financially sound and comparatively weaker issuers and originators in cases where certain ISINs do not appear among the holdings, even though there may be other reasons for this. An additional reason why such disclosure is not appropriate for the CBPP3 and ABSPP holdings (as opposed to the CSPP ones) is that many of these securities are issued and/or originated by euro area credit institutions, which are the main counterparties for the ECB's monetary policy operations.<sup>2</sup> Therefore, the Executive Board supports the view of the Director General Secretariat that such disclosure may seriously distort competition and compromise the integrity of the market.<sup>3</sup>

<sup>2</sup> Their role is determined by Article 19.1 of the Statute of the ESCB and further explained in Article 55(a) of the Guideline (EU) 2015/510 of the ECB of 19 December 2014 on the implementation of the Eurosystem monetary policy framework (ECB/2014/60).

<sup>3</sup> See *Versorgungswerk v ECB*, T-376/13, ECLI:EU:T:2015:361, paragraph 80.

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It follows that such publication could introduce unwanted volatility and distortions in the market, which could undermine the protection of the public interest as regards the monetary policy of the European Union, including the transmission of monetary policy impulses.

Second, the disclosure of detailed, broken down data on the securities held under the ABSPP and the CBPP3 in a centralised and complete manner by the ECB could undermine the purpose of these programmes. These programmes are aimed at encouraging market participants to invest in a category of assets, possibly even before the ECB and the Eurosystem NCBs purchase any, in order to take advantage of the price trends triggered by those purchases. The programmes are liable to have a positive effect on all of the assets in the category targeted. Since market participants are not familiar with the individual assets preferred by the ECB and the Eurosystem NCBs, they will tend to invest broadly in the entire category targeted. By contrast, if market participants were to be granted access to detailed, broken down information this could compromise the effectiveness of the intervention measures and, ultimately, the monetary policy pursued.

In relation to your argument that the “*ECB fails at providing evidence-based information showing that market distortion would effectively appear were such data be publicly available*”, the Executive Board would like to note that the Director General Secretariat's letter of 28 August 2018 included a statement of reasons sufficiently specific to be challenged if further reviewed. The general nature of the reasons for non-disclosure is justified by the concern to avoid revealing information which itself is intended to be protected under the exception relied on for non-disclosure.<sup>4</sup> In the present case the obligation to state reasons does not preclude the ECB from basing its decision on considerations that take account of hypothetical behaviour in which market participants might engage following disclosure of the requested document.

Finally, one of the distinctions between the CSPP on the one hand and the CBPP3 and ABSPP on the other is linked to the difference in their securities lending arrangements. The ECB publishes lists of the ISINs currently held for those programmes where the lending is mandatory. In order to clarify this also for the general public, the ECB will add additional Q&As (see Annex) to the relevant web page(s)<sup>5</sup>.

Based on the foregoing considerations, the Executive Board supports the decision of the Director General Secretariat that disclosure of such data may lead to market fragmentation and undermine the level playing field on which issuers and originators operate, thereby jeopardising the ECB's aim of minimising the impact of the implementation of the purchase programmes on the functioning of the relevant markets.

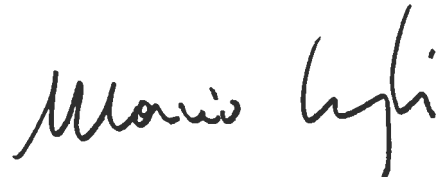
<sup>4</sup> See *Versorgungswerk v ECB*, T-376/13, ECLI:EU:T:2015:361, paragraph 55.

<sup>5</sup> <https://www.ecb.europa.eu/mopo/implement/omt/lending/html/index.en.html>, See Q5.1 for CBPP3 <https://www.ecb.europa.eu/mopo/implement/omt/html/cbpp3-ga.en.html> and See Q4.5 and Q4.6 for ABSPP <https://www.ecb.europa.eu/mopo/implement/omt/html/abspp-faq.en.html>

**Final remarks**

For the sake of good order, I would like to inform you that, under Article 8(1) of Decision ECB/2004/3, in the event of total or partial refusal, the applicant may have recourse to the remedies open under Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mario Draghi', is positioned to the right of the 'Yours sincerely,' text.

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**ANNEX****Q: How is securities lending of the Eurosystem's APP holdings implemented?**

Lending of securities purchased under the expanded asset purchase programme (APP) is conducted by the Eurosystem in a decentralised manner.

Eurosystem central banks use various lending channels for that purpose. These channels include bilateral securities lending, lending via specialised securities lending agents and via the lending infrastructure of international central securities depositories (ICSDs). The Eurosystem endeavours to offer effective and accessible securities lending arrangements.

Eurosystem central banks also either make their APP holdings available for the so-called fails mitigation lending programmes of international or domestic central securities depositories, or alternatively ensure that comparable arrangements are in place in their jurisdiction.

**Q: Why is securities lending of CBPP3 and ABSPP holdings not mandatory for the Eurosystem?**

For cost efficiency and operational reasons, securities lending of holdings under CBPP3 is not mandatory for Eurosystem central banks. The establishment and maintenance of securities lending arrangements has a certain cost for the Eurosystem central banks. The total cost depends on a number of factors, such as the lending channel, the lending infrastructure, the number of securities available for lending, the type of collateral accepted and other technical and operational parameters. The overall Eurosystem cost increases if several central banks make the same security available for lending.

Covered bonds purchased under the CBPP3 are often held by several (i.e. more than two) Eurosystem central banks, which is due to the programme-specific allocation of the eligible universe to individual Eurosystem central banks. This is in contrast to the PSPP and CSPP allocation, where each security is held by one or at most two Eurosystem central banks. Moreover, the CBPP3 allocation often results in individual central banks having relatively small holdings, so that the benefit of setting up and maintaining securities lending facilities would not justify the cost. However, even though lending the CBPP3 holdings is not mandatory, the ECB and several other national central banks make their CBPP3 (as well as CBPP and CBPP2) bonds available for lending. Those Eurosystem central banks that do not make their holdings available for lending very rarely receive requests to borrow them. For them, the expected demand would not justify the cost of establishing securities lending facilities. Most importantly, holdings from each covered bond jurisdiction are made available for lending by at least one Eurosystem central bank.

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Securities lending of holdings under the ABSPP is in principle possible for the ECB, which holds all the asset backed securities (ABS) purchased under the ABSPP. However, no requests for securities lending have been received since the start of the ABSPP in October 2014. This is reportedly at least partly due to the lower secondary market liquidity of this asset class and the higher share of hold-to-maturity portfolios compared to other markets. In the event of a broader increase in demand for borrowing the ABS held under the ABSPP, the ECB could consider making its holdings available for lending taking due consideration of the cost-benefit implications, including the technical complexity of ABS amortising cash flows.

**Q: Why does the Eurosystem not publish the ISIN lists of its ABSPP and CBPP3 holdings for securities lending purposes?**

The Eurosystem publishes the ISIN lists only for those programmes (PSPP and CSPP) for which the Governing Council has decided to make securities lending mandatory. Thus the Eurosystem does not publish the ISIN lists for its ABSPP and CBPP3 holdings as securities lending is not mandatory for those two programmes. Counterparties that wish to borrow CBPP3 holdings can contact the ECB or any NCB that makes those bonds available for lending to enquire about the potentially availability of their holdings of particular ISINs.

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