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ECB-UNRESTRICTED

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LS/CL/2020/282

Confirmatory application for public access to ECB documents

Dear Mr Schreiber,

On 1 July 2020 the ECB received your confirmatory application requesting that the Executive Board reconsider the decision of the Director General Secretariat of 29 June 2020¹ not to disclose the identified data in relation to your application for access to documents of 22 April 2020. To reiterate, the ECB identified a confidential internal database containing the requested data, *“documents which contain the separate bond value of CSPP [corporate sector purchase programme] and PEPP [pandemic emergency purchase programme] assets held by the ECB and the Eurosystem”*.

On 22 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 internal database containing the requested data, the separate bond value of CSPP and PEPP assets held by the ECB and the Eurosystem, which was identified as a document falling within the scope of

¹ See the letter of the Director General Secretariat of 24 July 2020 (LS/PS/2020/21).

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), as last amended by [Decision ECB/2015/1](#) (OJ L 84, 28.3.2015, p. 64).

your request, cannot be disclosed since disclosure would undermine the interests protected under the second indent of Article 4(1)(a) (*"the protection of public interest as regards the financial, monetary or economic policy of the Union or a Member State"*) of Decision ECB/2004/3.

In the confirmatory application you contend that the reasons underpinning non-disclosure of the identified data do not appear valid in the light of your arguments. The Executive Board considers that none of the arguments in your confirmatory application call into question the ECB's reasoning and the grounds given for the non-disclosure of the requested data.

The Executive Board wishes to underline that the Director General Secretariat's letter provided comprehensive background information and explained in detail the reasons why the data you requested 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 monetary policy of the Union. The disclosure of the requested data 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.

In this regard, you have pointed out that refusal to disclose the data on the basis of the protection of the public interest *"does not account for the fact that 'the protection of public interest' also entails the disclosure of detailed information on the climate impact of the ECB's operations"*. The Executive Board would like to note that the concept of "protection of the public interest" must be interpreted by reference to its wording and the purpose and general scheme of the rules of which it forms part. As is apparent from the wording, "protection of the public interest" within the meaning of Article 4(1)(a) of Decision ECB/2004/3 does not entail the disclosure of detailed information on the climate impact of the ECB's operations. The public interest which is protected by the exception laid down in Article 4(1)(a) of Decision ECB/2004/3, and which is relied upon in this case to refuse access to the requested document, is the monetary policy of the Union. The public interest to which you refer has a different sense, as it relates to the disclosure of information. Such an interest is rather reflected in the aim of Decision ECB/2004/3. The aim of Decision ECB/2004/3 is to give the public wider access to ECB documents, so as to reflect the intention expressed in the second

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sub-paragraph of Article 1 of the Treaty on European Union, which enshrines the concept of openness, to mark a new stage in the process of creating an ever closer union among the people of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen (Recitals 1 and 3 to Decision ECB/2004/3). Nonetheless, it is apparent from Recital 4 and Article 4 of Decision ECB/2004/3 that the right of access to ECB documents is subject to certain limits based on reasons of public or private interest which are laid down in the exceptions provided for in Article 4 of Decision ECB/2004/3. Under the exception relied upon in this case, namely that provided for in the second indent of Article 4(1)(a) of Decision ECB/2004/3, the ECB must refuse access to a document where its disclosure would undermine the protection of the monetary policy of the Union. Whilst in view of the objectives of Decision ECB/2004/3, exceptions to the right of public access to ECB documents must be interpreted and applied strictly, once it has been established that the exception relating to monetary policy applies, as in this case. This exception has an absolute character and does not provide for the possibility of demonstrating the existence of an overriding public interest.

The Executive Board would like to emphasise that the Director General Secretariat's letter of 29 June 2020 included sufficiently specific reasons as to how the disclosure would undermine the protection of the public interest as regards the monetary policy of the Union.

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

First, the disclosure of detailed, disaggregated data on the securities purchased and held under the CSPP and the PEPP (such as the separate bond value of CSPP and PEPP assets held by the Eurosystem) in a centralised and complete manner would lead market participants to draw inferences about the Eurosystem's holdings and adjust their own behaviour according to assumptions established on the basis of the information made available. The distribution of purchases across issuers/originators and other dimensions mainly reflects the market conditions at the time of the purchases and the intention to maximise the impact of interventions with respect to general credit conditions, while minimising distortions in market prices. Disclosure of the precise composition of the CSPP and PEPP portfolio may, for example, be perceived by the market as indicating that the Eurosystem differentiates between securities with varying characteristics and specificities and thus jeopardise market liquidity. Market participants could anticipate the Eurosystem's purchasing behaviour in relation to specific events, for example, events affecting corporate bond markets (such as drastic changes in volatility or company-specific events) and underestimate the importance of market liquidity for the Eurosystem's purchasing behaviour. More specifically, market participants could infer a replication of this behaviour if similar events were to occur in the future and pre-position accordingly to take advantage of this information at the expense of the Eurosystem. Granting market participants access to detailed, disaggregated information regarding the CSPP and PEPP portfolios, such as the separate bond value of CSPP and PEPP assets held

by the Eurosystem, would in turn have adverse market consequences. It would limit the capacity of monetary policy transmission channels to function efficiently owing to the unwarranted distortions that would follow changes in behaviour by other market participants. This could compromise the effectiveness of the intervention measures and, potentially, their monetary policy objective.³

In summary, as it was emphasised in the Director General's letter, the CSPP and PEPP purchases are intended to have a positive effect on all targeted asset categories. Since market participants are not familiar with the individual assets considered by the ECB and the Eurosystem national central banks (NCBs), they will tend to invest broadly in the entire categories targeted, supporting the effective implementation of monetary policy across the broader market.

Second, disclosure of the requested detailed data may lead to market fragmentation and undermine the level playing field on which issuers, originators and other actors in the corporate bond markets operate. This would jeopardise the ECB's intention to minimise the impact of the purchase programme implementation on regular price discovery processes and market functioning.

The minimisation of unintended consequences is key principle for ensuring a market-neutral implementation of the CSPP and PEPP. In this context, market neutrality means that, while the ECB aims to affect market interest rates, it does not want 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

³ See, in this regard, paragraph 80 of [Versorgungswerk v ECB](#), T-376/13, ECLI:EU:T:2015:361: "[...] 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 on the PEPP, see [Pandemic emergency purchase programme \(PEPP\)](#) on the ECB's website. For information on 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.

benchmark (and the associated limit framework) is aimed at making sure a diverse portfolio can be built and avoiding undue market distortions. In addition, the ECB pursues market neutrality and closely monitors the impact of its operations on market liquidity and collateral availability.

In relation to your arguments that *“it is not clear that the additional disclosure of bond value would lead market participants to significantly modify their behaviour [...] and that if the bond values were to be published at the same time, they would give little usable information to market participants”*, that *“the ECB provides no credible evidence or data to justify that the disclosure of separate bond value would ‘introduce undue volatility’ or ‘distort price discovery’ and that ‘whether information is published or not, the ECB’s asset purchases already impact ‘price discovery’ and asset prices’*”, the Executive Board would like to note that the Director General Secretariat’s letter of 29 June 2020 included sufficiently specific explanations addressing these points and reiterates the explanations that have been provided. Providing further (data) evidence on the effects of the disclosure would actually mean revealing confidential information which would harm the interest protected under the second indent of Article 4(1)(a) of Decision ECB/2004/3.⁵

For the above reasons, the Executive Board maintains that the disclosure of the requested data would harm the efficiency of these two above-mentioned programmes and create serious risks to achieving 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 asset purchase programmes (APP), including the CSPP, is crucial for supporting 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 critical for 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 outlook for the euro area posed by the COVID-19 pandemic.⁶

Taking into account the points made above, the Executive Board confirms the decision of the Director General Secretariat that access to *“documents which contain the separate bond value of CSPP [corporate sector purchase programme] and PEPP [pandemic emergency purchase programme] assets held by the ECB and the Eurosystem”* cannot be granted.

Remedies

⁵ See paragraph 55 of [Versorgungswerk v ECB](#), T-376/13, ECLI:EU:T:2015:361.

⁶ See [Decision \(EU\) 2020/440](#) of the European Central Bank of 24 March 2020 on a temporary pandemic emergency purchase programme (ECB/2020/17).

Please note 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,



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