EUROPEAN CENTRAL BANK

EUROSYSTEM

ECB-UNRESTRICTED

DIRECTORATE GENERAL SECRETARIAT

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Request for public access to ECB documents

Dear Mr Schreiber,

On 3 March 2021 the European Central Bank (ECB) received your application for access to documents which contain information on *"the list of banks that are borrowing under TLTROs, how much they are borrowing and at what rate"* (hereinafter point 1); and "*the estimated profit from negative rate TLTROs for each bank that benefit from this exceptional provision"* (hereinafter point 2).

You further explained that, *"today, individual banks disclose data on how much they have borrowed from the TLTROs and at what rate on a voluntary basis. However, the ECB itself do not publish this data and the ESMA recently underlined the insufficient transparency of TLTRO operations. This is highly problematic in the context of the Covid crisis as: the ECB heavily rely on TLTROs to provide an accommodative monetary policy (1.59 trillion in 2020 only); the ECB provides banks with negative TLTRO rates (- 1%) if they reach a pre-defined level of lending, thus giving several billion euros to the European banking sector. It is worth noting that the Bank of England disclose data regarding its Term funding scheme on its website."*

As indicated in our emails on 3 March and 6 April, your application had entered a queuing system and started being processed on 6 April and is hereby addressed. On 30 April, in line with Article 7(3) of Decision ECB/2004/3[1] on public access to ECB documents and owing to the increased workload, the ECB extended the stipulated time limit for reply by 20 working days

1. Background information

In June 2014, the Governing Council, decided to introduce the first series[2] of targeted longer-term refinancing operations (TLTROs), with a view of supporting bank lending to the non-financial private sector, meaning

[1] Decision ECB/2004/3 of 4 March 2004 on public access to European Central Bank documents (OJ L 80, 18.3.2004, p. 42)
[2] A first series of TLTROs was announced on 5 June 2014, a second series (TLTRO II) on 10 March 2016 and a third series (TLTRO III) on 7 March 2019.

households (excluding loans for the purpose of house purchases) and non-financial corporations, in Member States whose currency is the euro[3]. By offering to the participating banks long-term funding at attractive conditions TLTROs stimulate bank lending to the real economy. The amount that banks can borrow under TLTROs is linked to their outstanding amount of eligible loans to non-financial corporations and households and the interest rate to be applied is linked to the participating banks' lending patterns. This means that if participating banks meet the lending benchmarks, as defined in terms of loans to non-financial corporations and households, they receive a more attractive interest rate on their TLTRO borrowings.

Following the recalibration announced by the Governing Council on 10 December 2020[4], borrowing rates in these operations can be as low as 50 basis points below the average interest rate on the deposit facility over the period from 24 June 2020 to 23 June 2022, and as low as the average interest rate on the deposit facility during the rest of the life of the respective TLTRO. For banks not meeting the lending benchmarks, TLTRO rates are 50 basis points below the average interest rate on the main refinancing operations between June 2020 and June 2022 and equal to the average interest rate on the main refinancing operations in other periods. Overall, the most favourable interest rate can be (i) as low as -1% for a bank participating from TLTRO III.4 onwards, meeting the lending thresholds and repaying its borrowing up to June 2022; and (ii) as high as -0.08% for a bank borrowing only in the December 2021 operation, not meeting the additional lending benchmark and keeping the funds until maturity (December 2024).[5.]

The interest rates applicable to TLTROs reflect and are in line with the ECB's key policy rates. The rate on the ECB deposit facility, i.e. the rate at which banks excess reserves exceeding a minimum threshold are remunerated, has been lowered to -0.50% as of September 2019 to provide further monetary policy accommodation in presence of downward risks to price stability. The negative interest rates continue to be an effective tool for providing monetary policy accommodation. The ECB has clear evidence that providing interest rates below zero provides additional stimulus to the euro area economy, as negative interest rates are passed through the bank lending rates, and overall financing conditions of firms and households.[6]

2. Identification of the requested documents

<u>In relation to point 1 of your request</u>, *"the list of banks that are borrowing under TLTROs, how much they are borrowing and at what rate".* The ECB, after having carefully examined your request in line with Decision ECB/2004/3, has identified a confidential internal database containing (i) the list of banks that are borrowing under TLTROs, including the respective total amounts; and (ii) preliminary estimates of the potential interest rates at the bank level.

<u>In relation to point 2 of your request</u>, "*the estimated profit from negative rate TLTROs for each bank that benefit from this exceptional provision",* please note that an estimate of the profit from negative interest rates at bank is not available at the ECB, since such figures depend on a variety of factors, including but not limited to (i) the

[3] For more information, see https://www.ecb.europa.eu/mopo/implement/omo/tltro/html/index.en.html.

[4] For more information, see https://www.ecb.europa.eu/press/pr/date/2020/html/ecb.pr201210_1~e8e95af01c.en.html.

[5] For details on pricing see https://www.ecb.europa.eu/mopo/implement/omo/tltro/html/index.en.html.

[6] For more information see https://www.ecb.europa.eu/press/pressconf/2021/html/ecb.is210422~b0ad2d3414.en.html

extent to which TLTROs replaced alternative funding sources, and the rates thereof, (ii) the extent to which TLTROs enabled extra investments; (iii) the yields thereof net of provisions/impairment; and (iv) the counterfactual evidence of what lending rates and amounts would have been if the bank had not participated. Therefore, while the general rate range constitutes public information (as explained in section 1), no document, containing the requested information on the estimated profit at the bank level, as specified in part 2 of your request, exist.

3. Assessment of disclosure

In relation to point 1 of your request, following a thorough assessment in line with Decision ECB/2004/3 we regret to inform you that the identified confidential database cannot be disclosed, since its disclosure would undermine the interests protected under (i) 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")*; (ii) the first indent of Article 4(2) *("commercial interests of a natural or legal person, including intellectual property"*); and (iii) Article 4(1)(c) ("*the confidentiality of information that is protected as such under Union law*") of Decision ECB/2004/3.

The following explanations clarify the ECB's decision not to disclose the requested data.

(i) *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"*

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 or economic policy of the Union. As further detailed in the following paragraphs, the disclosure of the requested data could harm the effectiveness of the TLTRO programme and jeopardize the achievement of the monetary policy objectives pursued by the TLTRO operations, namely supporting bank lending to the real economy at favourable conditions, including to small businesses which rely heavily on bank-based financing, thereby undermining the ECB's ability to implement monetary policy effectively.

The ECB publishes, in a proactive and regular manner, the relevant decisions of the Governing Council and aggregated information concerning TLTROs (see also section 1) and evaluates regularly whether further information on these operations can be published, without jeopardising such operations. In particular, the ECB, in line with the approach for all open market operations, on the day of allotment, communicates the aggregate TLTRO take-up at Eurosystem level and the number of bidders. It also publishes information on the outstanding amounts borrowed and the regular early repayments.[7]

However, the disclosure of detailed, disaggregated data on the individual allotment to specific counterparties in a centralised manner, would lead to a situation where disclosure of reliance of individual counterparties on Eurosystem funding may act as a deterrent to participation or as a catalyst for aggravating a bank's liquidity position. This is because recourse to Eurosystem funding may be interpreted as an indicator of an individual

[7] For more information, see https://www.ecb.europa.eu/mopo/implement/omo/tltro/html/index.en.html.

bank's ability to access market-based funding and, more generally, of its liquidity situation. Absent any guarantee on confidentiality of individual data, participants could adjust their behaviour in terms of participation to operations and early repayments. Since the effectiveness of TLTROs also depends on broad-based, unfettered participation, it is of the utmost importance that counterparties' access to monetary policy operations is not hindered by potential concerns regarding the confidentiality of their operations. Ultimately, disclosure of TLTRO take-up might dissuade some banks from participating and this, in turn, could jeopardise the effectiveness of the operations (partly) depending on their broad and unfettered use.

In addition, the ECB notes that the interest rates applied to each participant are only determined at the time of repayment and depend on their lending performance relative to the benchmark. Therefore, the confidential information currently contained in the identified confidential database, only constitutes a preliminary estimate computed internally under very strong assumptions and it does not reflect the final TLTRO conditions of individually applied.

(ii) *<u>First indent of Article 4(2) of Decision ECB/2004/3 – ("commercial interests of a natural or legal person, including intellectual property")</u>*

Pursuant to first indent of Article 4(2) of Decision ECB/2004/3, the ECB must refuse access to documents where disclosure would undermine the protection of the commercial interests of a natural or legal person, unless there is an overriding public interest in disclosure.

The identified confidential internal database contains commercially sensitive information and data on the liquidity provided to participating banks. Disclosure of such data could affect the commercial interests of the participants and may also impact other market participants in the banking and financial sector of the euro area. In this respect, the ECB notes that credit institutions have a legitimate commercial interest in preventing third parties from obtaining information on their liquidity and amounts obtained in and through Eurosystem monetary policy operations, as certain information could trigger unwarranted speculation about the participant's financial and liquidity situation, their future participation in Eurosystem monetary policy operations within the TLTRO programme, and their prospective funding needs.

Depending on its content, the disclosure of such data could reveal financial weakness or strength, thereby respectively disadvantaging or benefitting the banks in comparison to other market participants for which similar information has not been made publicly available. Furthermore, interest rates in our targeted operations depend on the lending performance of the banks. Disclosing them may reveal information about their commercial activities and strategies. For the above reasons, the ECB considers that disclosing the requested data could undermine the protection of the commercial interests of the banks participating in the programme and other market participants in the banking and financial sector of the euro area.

The ECB is aware of the fact that many participants have proactively and voluntary communicated their borrowing under TLTROs to the market. On the one hand, for the reasons outlined in this reply, the voluntary nature of these disclosures does not translate into a general obligation to disclose as mandatory disclosure could be at odds with the achievement of the monetary policy objective of the operations. On the other hand, the legitimate commercial interest of participants to prevent third parties from obtaining information on their liquidity is duly protected, in as much as the disclosure is voluntary.

In this respect, from the ECB's perspective, it is noted that it would be inappropriate to introduce different communication standards for different operations, either through the ECB's own communication channels or via a mandatory disclosure requirement. The result would be a situation where individual take-up is communicated for some operations but not for others. There is no objective justification for applying different standards to operations that ultimately all have the same objective, namely, to maintain price stability in the euro area.

The above explanation also addresses your remark that *"today, individual banks disclose data on how much they have borrowed from the TLTROs and at what rate on a voluntary basis. However, the ECB itself do not publish this data".*

Finally, as mentioned above the ECB must refuse access to documents where disclosure would undermine the protection of the commercial interests of a natural or legal person, unless there is an overriding public interest in disclosure. In order for an overriding public interest in disclosure to exist, this interest, first, has to be public (as opposed to the private interest of the applicant) and, second, overriding, i.e., in this case it must outweigh the individual interest protected. For this purpose, specific and detailed reasons based on the nature of the documents must also be provided as justification for the invoked public interest. The ECB's assessment could not identify an overriding public interest in the disclosure of the identified documents, namely of disaggregated data regarding individual TLTRO participations and preliminary estimates of the potential interest rates at the bank level under TLTRO. Consequently, the prevailing interest in this case lies in protecting the commercial interests of the undertakings concerned, as explained above and access to the requested documents must be refused.

(iii) *Article 4(1)(c) of Decision ECB/2004/3 – ("the confidentiality of information that is protected as such under Union law")*

Pursuant to Article 4(1)(c) of Decision ECB/2004/3, the ECB must refuse access to documents where disclosure would undermine the protection of the confidentiality of information that is protected as such under-EU law.

In addition to the arguments justifying non-disclosure as provided under sections (i) and (ii), it is worth noting that the information contained in the internal database constitutes *"operational data relating to counterparties participating in Eurosystem monetary policy operations".* Under Article 188 of Guideline ECB/2014/60[8] on the Eurosystem monetary policy framework, such data are covered by professional secrecy obligations as referred to by Article 37 of the Statute of the ESCB.[9]The inclusion of operational data relating to Eurosystem counterparties under the strict requirements of professional secrecy reflects the sensitivity of such data and the

[8] Guideline (EU) 2015/510 of the European Central Bank of 19 December 2014 on the implementation of the Eurosystem monetary policy framework (ECB/2014/60) (OJ L 91, 2.4.2015, p. 3–135).

[9] Protocol (no 4) on the Statute of the European System of Central Banks and of the European Central Bank (OJ C 202, 7.6.2016, p. 230–250).

potential impact of disclosure on monetary policy as described in section (i). The maintenance of such confidentiality is of utmost importance to remove any hindrance to participation in monetary policy operations.

Taking into account the points made above, the ECB has concluded that the requested data cannot be disclosed.

4. Final remarks

For the sake of good order, we would like to inform you that, as regards the identified document 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,

[signed] [signed]

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Director General Secretariat

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