



EUROPEAN CENTRAL BANK
EUROSYSTEM

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Mr Gavin Sheridan
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28 September 2012
LS/PvdH/12/35

Public access to ECB documents (PA/2012/19)

Dear Mr Sheridan,

On 3 September 2012, the European Central Bank (ECB) received your request for access to all communications in the possession of the ECB that refer directly or indirectly to: (i) a previous public access request you made on 9 December 2011; (ii) a confirmatory application related to that initial application; and (iii) a decision by the ECB's Executive Board confirming the decision of the Director General Secretariat & Language Services not to grant access to the requested documents.

Following a thorough assessment of our records, we are pleased to grant access to the document in *annex A* under Decision ECB/2004/3 on public access to European Central Bank documents. This decision is based on the following grounds.

First, we note that, by definition, you are already in possession of the correspondence exchanged between you and the ECB at the different stages of the public access request you made on 9 December 2011 (documents listed in *annex B*, section 1).

Second, it follows from the individual assessment of the draft replies to the initial application and to the confirmatory application, as well as the related internal assessments (documents listed in *annex B*, section 2), that each of these documents is covered by Article 4(3) of Decision ECB/2004/3. Under this provision, the ECB shall refuse access to documents containing "opinions for internal use as part of deliberations and preliminary consultations within the ECB or with the national central banks even after the decision has been taken, unless there is an overriding public interest in disclosure".

As these documents contain either a draft of the reply, as proposed by ECB staff, or the staff's own assessment of the decision that the ECB should take concerning the request, they are covered by the exception for "opinions for internal use" in Article 4(3) of Decision ECB/2004/3. As a matter of fact, the ECB considers that releasing these preparatory documents, even partly, would undermine the possibility of the ECB's staff to freely submit uncensored advice to the ECB's decision-making bodies, and that the public interest commands that this "space to think" for the ECB and its staff should be protected. Based on

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the content of the documents and the subject of your current request, the ECB notes that there is no overriding public interest in disclosure that would outweigh the need to protect the internal consultation and deliberations of the ECB.

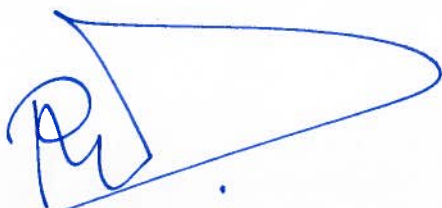
Third, it is our assessment that providing a certification of the ECB's Executive Board decision on the confirmatory application does not undermine the protection of the public interest as regards the confidentiality of the proceedings of the ECB's decision-making bodies, in the sense of the first indent of Article 4(1)(a) of Decision ECB/2004/3. Hence, we are providing you with a copy of the certification of the above-mentioned Executive Board's decision (see annex A).

Finally, our records also contain communications exchanged among ECB staff or with third parties that are of a purely procedural nature. This covers, for instance, the e-mail transmission of the public access request to relevant ECB departments, internal requests to investigate whether certain documents are in possession of the ECB, invitations to provide comments addressed to relevant ECB departments, etc. Since these communications do not contain any substance relating to ECB policies, activities or decisions, they do not constitute documents in the sense of Article 3(a) of Decision ECB/2004/3.

We draw your attention on the prohibition established by Article 10 of Decision ECB/2004/3 according to which "documents released [...cannot] be reproduced or exploited for commercial purposes without the ECB's prior specific authorisation. The ECB may withhold such authorisation without stating reasons."

Finally, 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".

With kind regards,



Pierre van der Haegen
Director General

Secretariat and Language Services



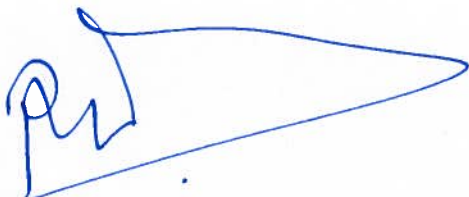
Roman Schremser
Deputy Director General

Secretariat and Language Services

Annex A

Certification of the Executive Board's decision on the confirmatory application

In my capacity as Secretary to the Executive Board, I hereby certify that on 8 February 2012, the Executive Board took note of a request for public access introduced on 9 December 2011 by Mr Gavin Sheridan of the related confirmatory application, approved the draft reply to the confirmatory application and delegated its finalisation to the President. On the same day, the reply letter was signed by the President and sent to the applicant.



Pierre van der Haegen

Director General Secretariat and Language Services

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Annex B

Documents covered by the public access request PA/2012/19

(1) Correspondence between the ECB and the applicant at the different stages of public access request PA/2011/15

- Letter of 9 January 2012 from the ECB to the applicant, containing the ECB's reply to the initial application, and its annex
- E-mail of 12 January 2012 from the applicant to the ECB, containing the confirmatory application
- Letter of 8 February 2012 from the ECB to the applicant, containing the ECB's reply to the confirmatory application

(2) Documents related to the preparation of the ECB's decisions on request PA/2011/15

- Assessment memo of the initial application
- Draft reply to the initial application
- Draft reply to the confirmatory application
- Dossier submitted to the ECB's Executive Board to prepare the decision on the confirmatory application: cover note, assessment, draft reply