

ECB-UNRESTRICTED

DIRECTORATE GENERAL SECRETARIAT

Mr
Frederik Kohl
via email: ask+request-12586-b2df1554@asktheeu.org>

20 April 2023
Reference number: LS/PS/2023/14

Requests for public access to ECB documents

Dear Mr Kohl,

On 10 February 2023 the European Central Bank (ECB) received your request for access to documents which "contain the [...] for the period between 1 January 2015 to date

1. *a list of all bank board meetings attended (or planned to be attended) by representatives of the ECB (including the name of attending representatives),*
2. *the format of attendance (in presence or virtually),*
3. *the general selection criteria according to which bank board meetings are attended by the ECB,*
4. *all minutes, meeting notes and summaries of these board meetings,*
5. *all correspondence, including attachments (including, but not limited to, emails, letters, and/or telephone call notes), between the ECB and supervised entities in regards to these board meetings; and*
6. *all documents prepared for the purpose of these board meetings and/or exchanged during the course of these board meetings."*

On 28 February 2023, the ECB provided the following explanations/clarifications with regard to No. 1-3 of your request:

- (i) a dedicated central register listing all bank board meetings attended between 2015 and 2023 and/or the format of attendance for each meeting (No. 1 & 2 above) does not exist and

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(ii) ECB supervisors do not attend the meetings in question on a regular basis using general selection criteria (No. 3 above). Such attendance is being decided on a case-by-case basis considering the relevant case-specific circumstances and with the specific goal of understanding how a bank is governed.

As regards the remainder of your request, No. 4-6 above, in line with Article 6(3) of Decision ECB/2004/3¹, the ECB noted that your request covers a particularly long period of time and the largest possible set of banks under the ECB's supervision, i.e. all of them. Consequently, in an attempt to align the public interest in disclosure of ECB documents with the respective administrative burden a request of this magnitude would entail, the ECB invited you to possibly narrow down the scope of the request e.g. by specifying its focus and/or limiting the categories of documents requested and/or reducing the sample of credit institutions concerned. On 21 March 2023, pointing to the attention the ECB's participation in board meetings of supervised banks has received from bank lobbyists and the financial press, you kept the initial scope of your request. You did however express willingness to break down the processing of your request into smaller samples of credit institutions, possibly on a country-by-country basis.

As stated above, the ECB does not maintain a specific repository for documents related to its participation in banks' board meetings, and thus a dedicated identification process for your request across all supervised institutions would have to be performed in our document management system. And while in this document management system documents regarding the supervision of a specific institution are indeed stored inside a dedicated folder structure, there is no individual tagging of these documents as to whether they pertain to board meetings to which ECB representatives participated.

Thus, an attempt at an identification process needed to start by identifying documents that potentially pertain to such meetings. In this context, an initial keyword search using only the term "board meetings" resulted in the ECB identifying more than 200,000 documents of 'positive hits' for this keyword alone. Such a keyword search only identifying *potentially* relevant documents, these would have to be checked whether they would actually be relevant for your request, then individually assessed for possible disclosure (against the exceptions foreseen in Article 4 of the ECB Decision ECB/2004/3) and eventually be redacted.

The process laid out above follows the necessities established by the applicable case law, which obliges the ECB to carry out a specific assessment of each and every requested document, in order to assess in a concrete and individual manner whether exceptions to the right of access apply.² The case-law also recognises that *"it is possible for an applicant to make a request for access, under Regulation No 1049/2001, relating to a manifestly unreasonable number of documents [...] thus imposing a volume of work for processing of his request which could very substantially paralyse the proper working of the institution"*.³

Therefore, according to the principle of proportionality, an institution must retain the right, in particular in cases where a concrete, individual examination of the documents (files) would entail an unreasonable amount of administrative work, to balance the interest in public access to the document(s) against the burden

¹ OJ L 80, 18.3.2004, p. 42, as last amended by OJ L 84, 28.3.2015, p. 64.

² Case T-2/03, Verein für Konsumenteninformation v Commission, paragraphs 69 and 72.

³ Case T-2/03, as above, paragraph 101.

of work so caused, in order to safeguard, in those particular cases, the interests of good administration. This has been confirmed by the Court of Justice the Case C-127/13, *Strack v Commission*.⁴

Furthermore, also a split of your request into country batches is no feasible option as it would still eventually necessitate a processing of a time span of more than eight years across more than 110 supervised institutions.

Concluding on the above the workload engendered by the handling of your application would be disproportionate with the objectives pursued by the legal framework for access to ECB documents.

We trust that in light of the above, this finds your understanding.

Yours sincerely,

[signed]

Petra Senkovic

Director General Secretariat

[signed]

Margarita-Louisa Karydi

Head of the Compliance and Governance Division

⁴ The court held there that “it flows from the principle of proportionality that the institutions may, in particular cases in which the volume of documents for which access is applied or in which the number of passages to be censured would involve an inappropriate administrative burden, balance the interest of the applicant for access against the workload resulting from the processing of the application for access in order to safeguard the interests of good administration” (Judgment of the Court of Justice of 2 October 2014 in Case C-127/13, *Strack v Commission*, paragraph 27. Also see the judgment of the Court of Justice of 6 December 2001 in Case C-353/99 P, *Council v Hautala*, paragraph 30).