

DGSE/CGO

ECB-UNRESTRICTED

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12 February 2016  
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**Request for public access to ECB documents in respect of the Supervisory Review and Evaluation (SREP) process relating to Banco Popular Español SA**

Dear Mr Legras,

On 7 December 2015 you requested access to documents *"relating to the outcome of the Supervisory Review and Evaluation Process [...] for Banco Popular Español SA, including, but not limited to, any minimum common equity tier 1 ratio imposed by the ECB to Banco Popular Español SA for the years 2015 and 2016 and the economic, legal and financial rationale for the setting of such a minimum common equity tier 1 ratio"*.

On 4 January 2016, in line with Article 7(3) of Decision ECB/2004/3,<sup>1</sup> the ECB extended the time limit for its reply to your request by an additional 20 working days, since several very long documents had to be assessed. On 28 January 2016 you were informed that due to our current particularly heavy workload and limited resources our response to your public access request would be delayed, and we promised to respond by mid-February.

Having thoroughly examined your request, we have identified 17 ECB documents which are of relevance to the Supervisory Review and Evaluation Process ("SREP") for Banco Popular Español SA. These consist of analytical assessments, internal presentations and documents related to the preparation or finalisation of the supervisory decision, including the relevant correspondence and decisions of the Supervisory Board and the Governing Council as recorded in the minutes of their meetings.

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

In line with the requirements established by Decision ECB/2004/3, it has been decided that these documents cannot be released as their disclosure would undermine the protection of the public interest as regards the instances provided for in: Article 4(1)(c) (*confidentiality of information under Union law*), the first indent of Article 4(1)(a) (*the confidentiality of the proceedings of the ECB's decision-making bodies*), the first indent of Article 4(2) (*the commercial interests of a natural or legal person*), the third indent of Article 4(2) (*the purpose of inspections, investigations and audits*) and Article 4(3) (*information of a preliminary nature for an internal use, received as part of internal consultations at the ECB*) of Decision ECB/2004/3. As a preliminary observation, the documents in question relate to a supervisory procedure<sup>2</sup> directed to the issuance of the SREP decision to Banco Popular Español SA. Consequently, these documents all belong to the same file as they refer to the decision-making process for said SREP decision.

Given this underlying consideration, we would like to provide you with detailed explanations on the above. First, according to Article 4(1)(c) of ECB Decision ECB/2004/3 the ECB shall refuse access to a document where disclosure would undermine the protection of the confidentiality of information under Union law. With regard to banking supervision, Article 27 of the SSM-Regulation<sup>3</sup>, in conjunction with Articles 53 et. seq. CRD IV<sup>4</sup>, provides for a professional secrecy regime under which the disclosure of confidential information related to the supervision of credit institutions by a competent authority is only permitted in the cases expressly mentioned in CRD IV. The ECB documents in question form part of the supervisory procedure file referred to above and can only be accessed by the parties involved in the procedure, subject to the limitations set out in Article 32 of the SSM Framework Regulation. The information contained in the file was made available to the ECB in the context of its supervisory tasks and includes financial data/evidence about the supervised entity which may not be disclosed under the professional secrecy regime of CRD IV.

Second, access to said documents must be refused under Article 4(2) first indent of Decision ECB/2004/3, according to which the ECB shall refuse access to a document where disclosure would undermine the protection of the commercial interests of a natural or legal person, including intellectual

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<sup>2</sup> An 'ECB supervisory procedure' means any ECB activity directed towards preparing the issue of an ECB supervisory decision, including common procedures and the imposition of administrative pecuniary penalties, see Article 2(24) of Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17), OJ L 141, 14.5.2014, p. 1.

<sup>3</sup> Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, OJ L 287, 29.10.2013, p. 63.

<sup>4</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.6.2013, p. 338.

property, unless there is an overriding public interest in disclosure. In the case in question, access to the ECB documents relating to the outcome of the SREP for Banco Popular Español SA do affect such commercial interests of the bank. The SREP findings are based on detailed information on institutions, processes and systems which are not known to the public and therefore could be misinterpreted to the disadvantage of the affected entity or even used by other credit institutions to gain a competitive advantage. An overriding public interest in disclosure could not be identified in the present case.

Third, access to said documents must be refused under Article 4(2) third indent of Decision ECB/2004/3, according to which the ECB shall refuse access to a document where disclosure would undermine the protection of the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure. The SREP represents the evaluation process of a credit institution, as it combines the off- and on-site collection of institution-specific data of a confidential nature, including through on-site inspections. Disclosure of the documents in question carries the risk of adversely affecting the conduct of (current and future) inspections and investigations concerning supervised entities and the methodology for carrying out such inspections. Moreover, the SREP is an ongoing process in the context of banking supervision and as such can lead to specific interaction between the supervising authority and the supervised entity. Against this background, disclosure of the documents could also have negative consequences for the future supervisory activities of the ECB, as the supervised entities could lose their trust in the ECB's reliability and in its sound administration of supervisory files. Such disclosure would, in turn, undermine the ECB's authority and lead to a situation where it would be unable to carry out its task of prudential supervision in the proper manner. For this reason, the documents contained in this supervisory procedure file may not be disclosed under the public access regime even after the completion of the SREP by the ECB. An overriding public interest which would justify their disclosure could not be identified.

Some of these documents contain information of a preliminary nature for internal use, received as part of internal consultations at the ECB in relation to the assessment of Banco Popular Español SA. As such, they are also protected by the aforementioned Article 4(3) of Decision ECB/2004/3. The ECB considers that disclosing these documents would undermine the possibility for ECB staff to freely submit uncensored advice to the ECB's decision-making bodies and that disclosure would thus limit the ECB's "space to think". It is in the public interest to protect internal consultations and deliberations. Disclosing the documents would also undermine the possibility of an effective, informal and confidential exchange of views within the ECB's decision-making bodies.

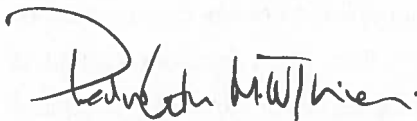
Finally, the relevant decisions of the Supervisory Board and the Governing Council are recorded in the minutes of their meetings. With regard to these minutes, according to the first indent of Article 4(1)(a) of Decision ECB/2004/3, the ECB shall refuse access to a document where disclosure would undermine the protection of the public interest as regards *"the confidentiality of the proceedings of the ECB's decision-*

*making bodies*". This confidentiality is also formally stated in Article 10.4 of the Statute of the ESCB ("*The proceedings of the meetings shall be confidential.*") and Article 23.1 of the ECB's Rules of Procedure (Decision ECB/2004/2) (the proceedings of the Supervisory Board are confidential "*unless the Governing Council authorises the President to make the outcome of their deliberations public*") in order to safeguard the independence of the members of the Supervisory Board and the Governing Council and the effectiveness of their decision-making process.

Our assessment above is without prejudice to the fact that on 24 December 2015 Banco Popular Español disclosed its Common Equity Tier 1 capital ratio of 10.25%,<sup>5</sup> supplemented on 13 January 2016.<sup>6</sup>

For the sake of good order, please note that under Article 7(2) of Decision ECB/2004/3 "*[I]n 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,



Pedro Gustavo Teixeira

Director General Secretariat



Roman Schremser

Chief Compliance and Governance Officer

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<sup>5</sup> Available in Spanish at:  
<http://www.grupobancopopular.com/ES/AccionistasInversores/EmisionesyRatings/Documents/Significant%20event%20Bondholders.pdf>.

<sup>6</sup> Available in English at  
<http://www.grupobancopopular.com/ES/AccionistasInversores/EmisionesyRatings/Documents/Relevant%20Information%20Bondholders.pdf>.