



EUROPEAN CENTRAL BANK  
EUROSYSTEM

Directorate General Secretariat

ECB-UNRESTRICTED

Ms Susana Coroado  
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8 April 2016  
LS/PT/2016/04

**Request for public access to ECB documents**

Dear Ms Coroado,

On 2 February 2016 you requested access to documents containing: "(i) any correspondence between the European Central Bank, namely Ms Danièle Nouy and Mr Vítor Constâncio, and the Portuguese Government, particularly the current and the former Minister of Finance, and the Portuguese Central Bank (Banco de Portugal) regarding the resolution of Banif and its sale to Santander; (ii) any correspondence between the European Central Bank, namely Ms Danièle Nouy and Mr Vítor Constâncio, and Santander representatives; and (iii) a list of meetings between ECB officials and Santander, concerning Banif and its minutes". On 24 February 2016, in accordance with Article 7(3) of Decision ECB/2004/3<sup>1</sup>, the ECB extended the stipulated time limit by 20 working days, on the grounds that a third party consultation was required.

It should be noted that it was the Portuguese national authority (Banco de Portugal) that decided to put Banif into resolution on 19 December 2015. For your convenience, we enclose a link to the publicly available document *Deliberations of the Board of Directors of Banco de Portugal published in order to keep the public informed and for the purposes of Article 112 of the Código do Procedimento Administrativo (Administrative Procedures Code)*<sup>2</sup>. Following this decision, the European Commission

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<sup>1</sup> 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).

<sup>2</sup> <https://www.bportugal.pt/en-US/OBancoeoEurosistema/Esclarecimentospublicos/Pages/infobanif.aspx>.

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approved Portuguese plans to provide state aid to cover the funding gap in the resolution of Banif and the asset sale to Santander on 21 December 2015.<sup>3</sup>

Having thoroughly examined your request, we have identified 16 ECB documents that relate to the resolution of Banif and the sale of its assets to Santander. With regard to point (i) of your request, we have identified a number of emails from Ms Nouy addressed to the Portuguese Minister of Finance and Banco de Portugal. We did not identify any such emails from Mr Constâncio. With regard to point (ii) of your request, we have identified no correspondence between Ms Nouy and/or Mr Constâncio and Santander representatives.<sup>4</sup>

The above-mentioned correspondence between the ECB and the Portuguese authorities took place between 19 December 2015 and 18 January 2016. These documents relate to a supervisory procedure<sup>5</sup>, launched with a view to revoking a banking licence.

In accordance with the requirements set out in Decision ECB/2004/3, and after consulting the Portuguese Finance Ministry and Banco de Portugal, it has been decided that:

- Two documents – the press release published by Banco de Portugal and Banco de Portugal’s decision to take resolution measures – can be disclosed to you, as they have since been published by Banco de Portugal.<sup>6</sup>
- The remaining 14 identified ECB documents relating to the ECB supervisory procedure cannot be released, as their disclosure would undermine the protection of: (i) the confidentiality of information that is protected as such under EU law, as provided for in Article 4(1)(c) of Decision ECB/2004/3; and (ii) the commercial interests of a natural or legal person, as provided for in the first indent of Article 4(2) of the same Decision. Access to these documents is also refused under Article 4(3) of this Decision, as they constitute documents drafted or received by the ECB for internal use as part of deliberations and primary consultations within the ECB, or reflecting exchanges of views between the ECB and other relevant authorities and bodies.

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<sup>3</sup> [http://europa.eu/rapid/press-release\\_IP-15-6380\\_en.htm](http://europa.eu/rapid/press-release_IP-15-6380_en.htm).

<sup>4</sup> This statement has no implications with regard to any correspondence that may have taken place between the ECB and Santander on supervisory matters, but that did not involve Ms Danièle Nouy or Mr Vítor Constâncio.

<sup>5</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>6</sup> See <https://www.bportugal.pt/pt-PT/OBancoeoEurosistema/ComunicadoseNotasdeInformacao/Paginas/comb20151220.aspx>, and [https://www.bportugal.pt/pt-PT/OBancoeoEurosistema/Esclarecimentospublicos/Documents/Deliberacao\\_20151220\\_2330.pdf](https://www.bportugal.pt/pt-PT/OBancoeoEurosistema/Esclarecimentospublicos/Documents/Deliberacao_20151220_2330.pdf).

We provide below a more detailed explanation of the reasons for the non-disclosure of the ECB documents relating to the ECB supervisory procedure file.

Under Article 4(1)(c) of Decision ECB/2004/3, the ECB will refuse access to a document where disclosure would undermine the protection of the confidentiality of information that is protected as such under EU law. With regard to banking supervision, Article 27 of the SSM Regulation<sup>7</sup>, in conjunction with Articles 53 *et seq.* of the Capital Requirements Directive (CRD IV)<sup>8</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, and subject to the limitations set out in Article 32 of the SSM Framework Regulation<sup>9</sup>. The information contained in the file was made available to the ECB in the context of its supervisory tasks and includes financial data and other information relating to the supervised entities, which may not be disclosed under the professional secrecy regime provided for by CRD IV.

Furthermore, access to the documents in question must be refused under the first indent of Article 4(2) of Decision ECB/2004/3, according to which the ECB will refuse access to a document 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 the case in question, access to the ECB documents relating to the resolution of Banif and the sale of its assets to Santander would affect the commercial interests of the latter. The documents identified by the ECB contain information that is not known to the public and which therefore could be used by other credit institutions to gain a competitive advantage. The ECB was not able to identify an overriding public interest in disclosure of these documents.

Some of the documents are also of a preliminary nature and were designed for internal use or for exchange of information with Banco de Portugal. As such, they are also protected by the first subparagraph of Article 4(3) of Decision ECB/2004/3. According to this provision, "*access to a document drafted or received by the ECB for internal use as part of deliberations and preliminary consultations within the ECB, or for exchanges of views between the ECB and NCBs, NCAs or NDAs,*

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<sup>7</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>8</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).

<sup>9</sup> 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 (ECB/2014/17), (OJ L 141, 14.5.2014, p. 1).

*shall be refused even after the decision has been taken, unless there is an overriding public interest in disclosure".* In this case, the ECB was not able to identify an overriding public interest in disclosure.

Finally, the ECB considers that access to emails between Ms Nouy and the Portuguese Minister for Finance must be refused under the second subparagraph of Article 4(3) of Decision ECB/2004/3. According to this provision, "*access to documents reflecting exchanges of views between the ECB and other relevant authorities and bodies shall be refused even after the decision has been taken, if disclosure of the document would seriously undermine the ECB's effectiveness in carrying out its tasks, unless there is an overriding public interest in disclosure".* The ECB considers that disclosing the above-mentioned emails would seriously undermine its ability to carry out its supervisory tasks, which depends on effective and loyal cooperation and trust between it and the national authorities. If the ECB is to cooperate effectively with national authorities, it is essential for there to be a space for the free and constructive exchange of views and information. This is of particular importance in crisis situations, where the authorities involved need to be able to communicate swiftly, directly and openly. In view of this, the ECB must have the right to protect documents exchanged as part of its cooperation with national authorities and other bodies. In the case in question, the ECB could not identify an overriding public interest in disclosure.

We should like to inform you that, under Article 7(2) of Decision ECB/2004/3, "*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 regard to point (iii) of your request, we can inform you that, to the best of our knowledge, no meeting took place between ECB officials and Santander representatives concerning the sale of Banif to Santander.

Lastly, with a view to provide you with a comprehensive overview, we have also assessed preparatory materials for the meeting of 17 December 2015 at the ECB between Mario Draghi, Vítor Constâncio, Benoît Cœuré, Sabine Lautenschläger, Danièle Nouy and the Minister of Finance of Portugal, Mr. Mário José Gomes de Freitas Centeno and Chief Economist of the Portuguese Finance Ministry, Mr. Álvaro Novo, on Portuguese economic and financial situation and on supervisory topics, to conclude that there were no documents concerning the sale of Banif to Santander.

Yours sincerely,



Pedro Gustavo Teixeira

Director General Secretariat



Roman Schremser

Chief Compliance and Governance Officer

Encl.