



EUROPEAN CENTRAL BANK

EUROSYSTEM

ECB-UNRESTRICTED

DIRECTORATE GENERAL SECRETARIAT

Mr Abdul Hai

ask+request-2929-eb8821c3@asktheeu.org

20 July 2016

LS/PT16/24

Dear Mr Hai,

Request for public access to ECB documents

On 23 May 2016 the European Central Bank (ECB) received your request for access to *"all the documents from 01/01/2016 which relate to United Kingdom's ('UK') referendum and focus on the Bank of England's duties in banking supervision"*. On 17 June 2016, the ECB, due to exceptional workload, invoked Article 7.3 of the Decision ECB/2004/3 of 4 March 2004 on public access to European Central Bank documents ('Decision ECB/2004/3')¹ and extended the time limit provided to reply by an additional 20 working days.

Having thoroughly examined your request, in line with Decision ECB/2004/3, we have identified the following ECB documents which relate to United Kingdom's ('UK') referendum and focus on the Bank of England's duties in banking supervision:

- (i) a note, dated 11 March 2016, entitled "Note: political, economic and financial dynamics in the run-up to the UK referendum" and in particular Section 2.2 ("Impact on the future development of banking supervision and financial legislation"), which provides an assessment of the issues arising out of the New Settlement;
- (ii) a note, dated 15 March 2016, entitled "The UK referendum on the EU: scenarios and possible consequences on policy and regulatory matter from a bank supervisory perspective and in particular Section 1.1.3 ("Specific Topics"), Section 2.2 ("Passporting") and Section 2.4 ("Exchange of Information and Memoranda of Understanding"), Section 2.6 ("Recovery and Resolution"), Section 2.7 ("Deposit Guarantee"), Section 2.8 ("Liquidity") and Section 2.9 ("Macro-prudential oversight"), where legal and policy implications of the UK referendum on the Single Supervisory Mechanism ('SSM') are discussed;
- (iii) an email, dated 6 May 2016, entitled "The UK referendum - possible consequences on policy and regulatory matters from a SSM perspective – SB Note";

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

Address

European Central Bank
Sonnemannstrasse 20
60314 Frankfurt am Main
Germany

Postal address

European Central Bank
60640 Frankfurt am Main
Germany

Tel.: +49 69 1344 0
Fax: +49 69 1344 6000
E-mail: info@ecb.europa.eu
Website: www.ecb.europa.eu

(iv) a note, dated 18 May 2016, entitled “Brexit: risks and risk management – summary assessment”;

(v) a note, dated 25 May 2016, entitled “The UK referendum- possible consequences on policy and regulatory matters from a SSM perspective”, which provides an assessment of the possible impact of the UK vote upon EU legislation and institutions, as well as upon SSM supervision.

In this context we should like to clarify that ECB documents on Brexit related risks for specific credit institutions fall outside the scope of your request.

Following a thorough assessment in line with the requirements of Decision ECB/2004/3, it has been decided that documents (i) and (iii), (iv) and (v) are partially disclosed to you (please refer to the attachments). The redacted parts of these documents are protected under the second indent (*the financial, monetary or economic policy of the Union or a Member State*) and the seventh indent (*the stability of the financial system in the Union or in a Member State*) of Article 4(1)(a) of Decision ECB/2004/3 as well as under Article 4, paragraph 3, first sub-paragraph (*‘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, shall be refused even after the decision has been taken,...’*).

Document (i) is an internal assessment of the issues arising out of the New Settlement² and despite the fact that the New Settlement will now not take effect and ceases to exist³, the document contains analysis which may impact the financial, monetary or economic policy of the UK and the stability of the financial system in the UK and the Union as a whole.

Documents (iii) and (v), consist of an assessment of the possible impact of the UK vote on EU legislation and institutions and could negatively affect the financial market conditions and intensify the heightened market uncertainty over the financial stability of a Member State, i.e. the UK and the Union.

Moreover, the redacted parts of documents (i) and (iii) to (v) were drafted for internal use and present ECB staff views’ on potential scenarios and possible consequences on policy and regulatory matters from a banking supervision perspective. The documents have been prepared with a view to support and prepare the deliberations and internal reflections within the ECB or the SSM. It follows that the views expressed in these documents are those of staff members and do not necessarily reflect those of the ECB or the SSM. For these reasons, the ECB considers that, disclosing the redacted parts of these documents would not only undermine the possibility for ECB’s staff to freely submit uncensored advice to their decision-making bodies, but would also undermine the possibility of an effective, informal and confidential exchange of views among the members of the decision-making bodies. As such it would thus limit the ECB’s “space to think”. The ECB did not identify an overriding public interest in the disclosure of the redacted parts of these documents.

In addition, access to the redacted parts of document (iv) must be refused under the first indent of Article 4(2) 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*

² A New Settlement for the United Kingdom within the European Union, extract of the conclusions of the European Council of 18-19 February 2016, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.CI.2016.069.01.0001.01.ENG&toc=OJ:C:2016:069:TOC>

³ Statement by the EU leaders and the Netherlands Presidency on the outcome of the UK referendum available at <http://www.consilium.europa.eu/en/press/press-releases/2016/06/24-joint-statement-uk-referendum/>

property, unless there is an overriding public interest in disclosure". In the case at hand, the document (iv) which is a summary assessment of the exposure, risks and risk management of SSM banks stemming from different scenario on the outcome of the UK referendum and contains sensitive information that is not known to the public and may cause disruption to the SSM banks' critical economic functions, such as taking deposits, making inter-bank payments and/or providing credit to the economy. The ECB was not able to identify an overriding public interest in the disclosure of the redacted parts of the document that contain such information.

As regards those parts of document (ii) falling under the scope of your request (i.e. Section 1.1.3 ("Specific Topics"), Section 2.2 ("Passporting"), Section 2.4 ("Exchange of Information and Memoranda of Understanding"), Section 2.6 ("Recovery and Resolution"), Section 2.7 ("Deposit Guarantee"), Section 2.8 ("Liquidity") and Section 2.9 ("Macro-prudential oversight")), it has been decided that access cannot be granted, other than the brief description of their content, as even partial disclosure would undermine the protection of the public interest as regards the protection of economic policy of the Union and of the UK, as well as the stability of the financial system in the Union and the UK. Disclosure of the content of these parts of document (ii) is protected under the second indent (*the financial, monetary or economic policy of the Union or a Member State*) and the seventh indent (*the stability of the financial system in the Union or in a Member State*) of Article 4(1)(a) of Decision ECB/2004/3, given the pressure on the UK economy and its banking sector. These parts discuss legal and policy implications of the UK referendum with regard to several aspects of the single market legislation and analyses different scenarios. Hence, their disclosure may cause disruption in the market. In addition, risks for spill-over effects for the financial stability of the UK and the Union are observed.

Moreover, those parts of document (ii) falling under the scope of your request are protected under Article 4, paragraph 3, first sub-paragraph (*'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, shall be refused even after the decision has been taken,...'*). They were also drafted for internal use and present ECB staff views' that do not necessarily reflect those of the ECB. For all these reasons also outlined above, the ECB considers that, disclosing this document would limit the ECB's "space to think". The ECB did not identify an overriding public interest in the disclosure of this document. For this reason, the ECB cannot grant partial access to document (ii).

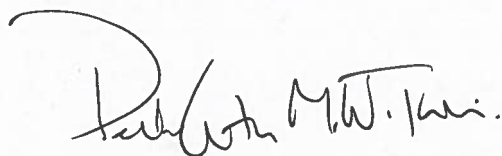
Please note that where applicable, the documents have been anonymised and personal data of staff members of the ECB, or of third parties, have been redacted, together with any information that would make the data subjects identifiable, since their personal data is protected by Article 4(1)(b) of Decision ECB/2004/3 in conjunction with Article 8 of Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Union institutions and bodies and on the free movement of such data. One of the conditions stipulated by Article 8(b) of Regulation No 45/2001 for the transfer of personal data to recipients, other than European Union institutions and bodies, subject to Directive 95/46/EC, is that the necessity of having such personal data transferred is established. Given that you have not established the necessity of transferring such data to you, such personal data has been removed in line with the aforementioned provisions.

For the sake of good order, we should like to inform you that, in line with Article 10 of Decision ECB/2004/3, "Documents released in accordance with this Decision shall not be reproduced or exploited for commercial purposes without the ECB's prior specific authorisation. The ECB may withhold such authorisation without stating reasons."

Please be informed that, in line with Article 7(2) of the above-mentioned Decision, "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".

We trust the above is useful for your purposes.

Yours sincerely,



Pedro Gustavo Teixeira
Director General



Roman Schremser
Chief Compliance and Governance Officer