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Reference: LS/PS/2021/13

Request for public access to ECB documents

Dear Mr Schreiber,

On 15 September 2020 the European Central Bank (ECB) received your application for access to documents which contain the following information: the specific set of ESG, sustainable or climate related criteria used to invest the ECB's own funds, and/or; the detailed SRI strategy and principles of the ECB on its own funds.

On 3 February 2021, this request, your third application for access to ECB documents, has started being processed¹. On 2 March 2021, in line with Article 7(3) of Decision ECB/2004/3² on public access to ECB documents and owing to the increased workload, the ECB extended the stipulated time limit for reply by 20 working days.

Introductory remarks

The ECB's own funds portfolio consists of the invested counterpart of the ECB's paid-up capital as well as amounts held from time to time in its general reserve fund and provisions against financial risks. The purpose of this portfolio is to provide income to help fund the ECB's operating expenses which are not related to the performance of its supervisory tasks. This portfolio is invested in euro-denominated assets with the objective of maximising returns, subject to the limits imposed in terms of risk³. In addition, ECB's own funds portfolio together with the staff pension fund are part of the Eurosystem non-monetary policy portfolios, including the assets held by Eurosystem central banks that are not related to monetary policy operations.

¹ For the sake of good administration, you were informed that the processing of your request was put on hold until your previous two requests (reference: LS/PS/2020/21 and reference: LS/PS/2020/36), one confirmatory application request (reference: CL/20/282) and the inquiry of the European Ombudsman following your complaint about the ECB's refusal to grant public access to documents containing the separate bond value of the assets held by the ECB and the Eurosystem under the CSPP and PEPP (your confirmatory application with reference: CL/20/282), were finalised.

² Decision ECB/2004/3 of 4 March 2004 on public access to European Central Bank documents (OJ L 80, 18.3.2004, p. 42).

³ See ECB website: <https://www.ecb.europa.eu/ecb/tasks/reserves/html/index.en.html>.

For its **own funds portfolio, the ECB follows a sustainable and responsible investment (SRI) strategy that targets an increase in its share of green securities over time**⁴. This aims to contribute, within the ECB's mandate, to global efforts to promote environmental objectives – including the EU climate goals – and to combat climate change. Furthermore, on 25 January 2021, the ECB announced its decision to **invest a share** of its own funds portfolio **in the euro-denominated green bond investment fund** for central banks (EUR BISIP G2) established by the Bank for International Settlements (BIS) and focused on renewable energy production, energy efficiency and other environmentally friendly projects. This investment complements direct purchases of green bonds in secondary markets currently amounting to 3.5% of this portfolio, with a total market value of €20.8 billion to be increased over the coming years⁵.

As part of the common Eurosystem stance for the application of climate change-related SRI principles to euro-denominated non-monetary policy portfolios announced on 4 February 2021⁶, the ECB will prepare annual climate-related disclosures for its own funds portfolio within the next two years⁷. The disclosure aims to increase the awareness and understanding of climate risks while promoting climate-related disclosures. The common Eurosystem stance follows extensive preparatory work within the Eurosystem and has also benefited from the analysis and is aligned with the recommendations of the Network of central banks and supervisors for Greening the Financial System, which is chaired by the ECB.

Identification of the requested documents

After having carefully examined your request on the SRI strategy and principles currently applicable to the ECB's own funds portfolio in line with Decision ECB/2004/3, the ECB has identified three confidential ECB documents which are of relevance to your application, namely; (i) one Executive Board memo and (ii) one background note, both documents discussed by the Executive Board during December 2019, on the status, developments and proposals regarding the current ECB's SRI strategy for the ECB's own funds portfolio. These documents also contain the steps to integrate SRI considerations in the ECB's own funds portfolio, suggesting concrete proposals to set-up the strategy; and (iii) one Executive Board memo considered in January 2021 also discussing the implementation progress and update of the targets.

Assessment of disclosure

Following a thorough assessment in line with Decision ECB/2004/3, we regret to inform you that the three identified documents cannot be disclosed since their disclosure would undermine the interests protected under the first sub-paragraph of Article 4(3) of Decision ECB/2004/3 ("confidentiality of documents drafted or

⁴ See ECB (2021), [ECB to invest in Bank for International Settlements' green bond fund](#), 25 January 2021.

⁵ See Lagarde, C. (2021), [European Parliament plenary debate on the ECB Annual Report](#), 8 February 2021.

⁶ See ECB (2021) [Decisions taken by the Governing Council of the ECB \(in addition to decisions setting interest rates\)](#), 3 February 2021.

⁷ See ECB (2021), [Eurosystem agrees on common stance for climate change-related sustainable investments in non-monetary policy portfolios](#), 4 February 2021 and [letter from the ECB President to Mr Markus Ferber](#), MEP, on climate change, 5 February 2021.

received by the ECB for internal use as part of deliberations and preliminary consultations within the ECB”), and the third indent of Article 4(1)(a) of Decision ECB/2004/3 (“the internal finances of the ECB or of the NCBs”). Furthermore, in assessing the feasibility of partial disclosure, we would like to inform you that all disclosable information contained in the identified documents has already been made publicly available on the ECB website. In addition, the ECB has already provided exhaustive information on the way its own funds portfolio is invested and managed with a view to integrate climate change-related SRI considerations in its policies⁸.

The following explanations clarify the ECB's decision not to disclose the requested documents.

- (i) *Confidentiality of documents 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*

Pursuant to the first sub-paragraph of Article 4(3) of Decision ECB/2004/3, the ECB must refuse access to documents 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, even after the decision has been taken, unless there is an overriding public interest in disclosure.

The three identified documents are confidential documents drafted by the ECB for internal use as part of the Executive Board deliberations which have led to the design of ECB's current climate-related SRI strategy used to invest in the ECB's own funds.

Those documents were drafted for the purpose of opinion-forming and contain reflections, suggestions and proposals. It is of vital importance that the ECB is able to convey pertinent and candid views in the manner that is judged to be most effective for achieving the intended purpose, ultimately serving the public interest. If documents reflecting internal deliberations, proposals or exchanges of views were to be disclosed, their authors would take the risk of disclosure into account in the future, to the point where they could potentially practise self-censorship and cease to put forward candid views or comprehensively describe possible scenarios⁹. The result would be that the ECB would no longer be able to benefit from an exchange of uncensored opinions and internal advice, given free of any potential external constraints linked to the risk of being misinterpreted or giving the wrong signal on a matter which from today's perspective is still topical. For these reasons, disclosing the identified documents would undermine the ability of the ECB's staff to freely exchange views and provide uncensored advice.

For these reasons, disclosing more information about these documents than what it is already made available on the ECB website – even after the decision has been taken – would seriously undermine the ECB's ability to effectively handle its internal finances and investment framework (also in connection with point (ii), below).

⁸ See also footnotes 4 to 7.

⁹ See *MyTravel v Commission*, Case T-403/05, ECLI:EU:T:2008:316, paragraph 52.

The exception to the right of access contained in Article 4(3) of Decision ECB/2004/3 may be waived if there is an overriding public interest in disclosing the requested documents. In order for an overriding public interest in disclosure to exist, this interest, first, has to be public (as opposed to the private interests of the applicant) and, second, overriding, i.e. in this case it must outweigh the interest protected under Article 4(3). For this purpose, specific and detailed reasons based on the nature of the documents must be provided assuring the protection of the invoked public interest¹⁰. However, we could not identify in your application any elaborated arguments establishing the existence of an overriding public interest in the disclosure of the documents at issue. Consequently, the prevailing interest in this case lies in protecting the confidentiality of deliberations and consultations within the ECB and therefore access to the identified documents must be refused.

(ii) The protection of the public interest as regards the internal finances of the ECB or of the NCBs

Pursuant to the third indent of Article 4(1)(a) of Decision ECB/2004/3, the ECB must refuse access to documents where disclosure would undermine the protection of internal finances of the ECB.

These three documents contain confidential information regarding the ECB's investment framework, including potential changes to the ECB's own funds portfolio, planned investments and amounts of holdings. Releasing this detailed information might harm the independence that the ECB needs in order to implement its investment framework and manage financial risks to cover operating expenses. In fact, the disclosure of detailed information might also expose the ECB to external pressure aimed at steering or orienting its decisions in relation to the risk management of its portfolios, and the implementation of strategies designed for the ECB's own funds portfolio.

Therefore, disclosure of these preparatory ECB documents would specifically and effectively undermine the public interest as regards the protection of internal finances of the ECB, pursuant to the third indent of Article 4(1)(a) of Decision ECB/2004/3, in particular with respect to the ECB's ability to effectively handle its internal finances and investment framework. In the light of the above, access to the identified documents cannot be granted.

Partial access to the documentation

The ECB has considered whether partial access could be granted to the documents, but, because of the amount of confidential information, it would not be possible to provide the documents with meaningful content after the redaction of the protected information. Consequently, the ECB has come to the conclusion that the documents are covered in their entirety by the invoked exception of Article 4(3) first sub-paragraph ("confidentiality of documents drafted or received by the ECB for internal use as part of deliberations and preliminary consultations within the ECB"), and the third indent of Article 4(1)(a) ("the internal finances of the ECB or of the NCBs") of Decision ECB/2004/3.

¹⁰ See *Association Justice & Environment v European Commission*, T-727/15, paragraph 56.

Final remarks

For the sake of good order, we would like to inform you that, as regards the identified documents 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”*.

Yours sincerely,

[signed]

Petra Senkovic
Director General Secretariat

[signed]

Roman Schremser
Chief Compliance & Governance Officer