

DIRECTORATE GENERAL SECRETARIAT

KRW LAW – Euro

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Reference: LS/PS/2022/38

### Request for public access to ECB documents

Dear Sirs,

On 16 May 2022 the European Central Bank (ECB) received your request for access to “correspondences between the European Central Bank and the Central Bank of Ireland from 19th February 2019 to present in respect of Article 3 of the Decision of the European Central Bank of 19 April 2013 [ECB/2013/10](#)”.

On 17 June 2022, owing to the need to consult the authors of third-party documents in accordance with Article 4.4 of [Decision ECB/2004/3](#) on public access to ECB documents, the ECB extended the stipulated deadline for reply with 20 working days in line with Article 7(3) of Decision ECB/2004/3.

### Identification of documents

After carefully examining your request in line with Decision ECB/2004/3, the ECB has identified seven ECB documents reflecting bilateral exchanges between the Central Bank of Ireland (CBI) and the ECB on Article 3 of Decision ECB/2013/10 setting out the conditions applying to the exchange of damaged genuine euro banknotes. A comprehensive list of the documents identified is listed in the Annex to this letter.

### Assessment of disclosure

Following a thorough assessment in line with Decision ECB/2004/3, and in consultation with the CBI, the ECB has decided to grant access to document 2 and partial access to documents 1 and 3 (see attachments). Some parts of documents 1 and 3 have been redacted to protect the public interest as regards the integrity of euro

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banknotes (fourth indent of Article 4(1)(a) of Decision ECB/2004/3) and the confidentiality of documents drafted or received by the ECB [...] for exchanges of views between the ECB and NCBs (first sub-paragraph of Article 4(3)). The Annex to this letter lists the redacted parts together with the applicable exemption to disclosure.

As regards documents 4-7, we regret to inform you that these documents cannot be disclosed, either in full or in part, since disclosure over and above reference to their content would undermine the protection of the public interest as regards the integrity of euro banknotes (fourth indent of Article 4(1)(a) of Decision ECB/2004/3) and the confidentiality of documents drafted or received by the ECB [...] for exchanges of views between the ECB and NCBs (first sub-paragraph of Article 4(3)).

The explanations provided below clarify the ECB's decision not to disclose (parts of) documents 1 and 3-7.

#### *Protection of the public interest as regards the integrity of euro banknotes*

Under the fourth 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 the public interest as regards "the integrity of euro banknotes". Documents 1 and 3-7 are, in full or in part, covered by the protection provided by that provision.

The CBI and the ECB corresponded on technical aspects related to the exchange of damaged euro banknotes, including on the execution of forensic analyses and the interpretation of their results. This correspondence contains information on the general approach and principles informing the procedures which the Eurosystem central banks have to follow when damaged euro banknotes are submitted for exchange; the documents also contain information on the characteristics of different types of damage and on the identification of intentionally mutilated or damaged banknotes. By keeping the information contained in the documents identified confidential, the ECB aims at minimising the risk of facilitating criminal attempts to have banknotes exchanged by circumventing the ECB's procedures. In doing so, the ECB ultimately aims at ensuring that the public has confidence in the euro banknotes as a secure means of payment and store of value.

For these reasons, disclosing the (redacted parts of) documents 1 and 3-7 would seriously damage the protection of the integrity of euro banknotes.

#### *Confidentiality of documents reflecting exchanges of views between the ECB and NCBs*

Under 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 exchanges of views between the ECB and NCBs [...] even after the decision has been taken, unless there is an overriding public interest in disclosure. Documents 1, 5 and 6 are, in full or in part, covered by the protection provided by that provision.

The bilateral correspondence between the CBI and ECB was intended for the purpose of sharing information and seeking and providing guidance for the implementation of the procedures and legal provisions related to handling of damaged euro banknotes. Public release of such internal correspondence would undermine the

ECB's legitimate interest in having frank, objective, and comprehensive discussions on complex technical and legal matters. As such, disclosing internal deliberations to the public would seriously undermine the ECB's opinion-building process for the formulation of its stance in similar cases in the future.

For these reasons, disclosing the (redacted parts of) documents 1, 5 and 6 would undermine the ability of the ESCB's staff to freely seek uncensored advice and to exchange views.

### **Protection of personal data**

Where applicable, parts containing personal data of staff members of the ECB or of third parties (namely, names of staff members, signatures, handwritten salutations) have been redacted, together with any non-public information that would make the data subjects identifiable. Personal data are protected by Article 4.1(b) of Decision ECB/2004/3 in conjunction with Article 9 of Regulation (EU) 2018/1725 of the European Parliament and of the Council. Article 9(1)(b) of Regulation (EU) 2018/1725 stipulates that, for the transfer of personal data, the recipient must establish a necessity to have personal data transmitted for a specific purpose in the public interest. Since you have not established such a necessity, access to personal data in the documents must be refused on the basis of Article 4(1)(b) of Decision ECB/2004/3.

### **Partial access to the documentation**

The ECB has considered whether partial access could be granted to documents 4-7. However, the amount of confidential information contained in those documents is such that they would no longer be meaningful once all of the protected information had been redacted. Consequently, the ECB has come to the conclusion that documents 4-7 are covered in their entirety by the exceptions provided for in the fourth indent of Article 4(1)(a) and in Article 4(3) of Decision ECB/2004/3.

### **Overriding public interest in disclosure**

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. Such an interest must (i) be public and (ii) outweigh the harm caused by disclosure. In that case, specific and detailed reasoning based on the nature of the relevant documents must be provided in order to explain why disclosure is necessary to ensure the protection of the public interest that is being invoked.<sup>1</sup> However, we could not identify in your application any arguments establishing the existence of an overriding public interest in the disclosure of the documents at issue.

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<sup>1</sup> See Case T-727/15, Association Justice & Environment v European Commission, paragraph 56.

**Final remarks**

For the sake of good order, we would also like to inform you that, as regards documents 1 and 3-7, Article 7(2) of Decision ECB/2004/3 provides that “[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,

[signed]

[signed]

Petra Senkovic

Roman Schremser

Director General Secretariat

Chief Compliance and Governance Officer

**Annex: List of identified documents**

	<b>Description</b>	<b>Disclosure (* redaction of personal data)</b>	<b>Legal basis for exemption</b>
<b>1</b>	Email exchange dated 20-22 March 2019 requesting and providing detailed information on damaged euro banknotes	Partial*	Fourth indent of Article 4(1)(a)  First subpara of Article 4.3  The redacted parts contain information and exchanges of views on the procedure for the assessment of damaged banknotes. This information is not disclosed to protect the confidentiality of the ECB's general approach and principles for the handling of damaged banknotes and the achievement of their objectives.
<b>2</b>	Email dated 26 March 2019 from the CBI to the ECB with information on damaged euro banknotes submitted for testing	Yes*	Fourth indent of Article 4(1)(a)
<b>3</b>	Parts of an email exchange dated 5-8 April 2019 which relate to testing of damaged euro banknotes	Partial*	Fourth indent of Article 4(1)(a)  The redacted parts contain information on the assessment of damaged banknotes. This information is not disclosed to protect the confidentiality of the ECB's general approach and principles for the handling of damaged banknotes and the achievement of their objectives.
<b>4</b>	Email exchange dated 24-27 May 2019 informing about forensic analysis of damaged euro banknotes	No	Fourth indent of Article 4(1)(a)

5	Email exchange dated 24 July – 14 August 2019 discussing technical assessments on the exchange of damaged banknotes.	No	Fourth indent of Article 4(1)(a) First subpara of Article 4.3
6	Email dated 2 August 2019 from the ECB to the CBI exchanging views on the forensic analysis of damaged euro banknotes	No	Fourth indent of Article 4(1)(a) First subpara of Article 4.3
7	Email exchange dated 18-24 September 2019 on the ECB's guidance for the handling of damaged banknotes	No	Fourth indent of Article 4(1)(a)