



DIRECTORATE GENERAL SECRETARIAT



20 January 2022

Reference: LS/PS/2022/1

Request for public access to ECB documents

Dear 

On 23 November 2021 the European Central Bank (ECB) received your application for public access to (i) *“analyses, reports, etc. on the World Climate Conference in Glasgow (COP26) from 1 October 2021 to the present day”*; and (ii) *“interview preparation documents, briefings, etc. for members of the Executive Board on climate change since 1 January 2021”* (ref. # 233566).

On 26 November 2021, you expressed your agreement to our proposal to break down your request into smaller batches and deal with them successively, by first addressing point (i) of your request.

On 20 December 2021, in line with Article 7(3) of Decision ECB/2004/3¹ on public access to ECB documents and owing to an increased workload the ECB extended the stipulated time limit for our reply to point (i) of your request by 20 working days.

We hereby provide you with the assessment of your request for access to *“analyses, reports, etc. on the World Climate Conference in Glasgow (COP26) from 1 October 2021 to the present day”*.

1. Preliminary information

The COP26 summit brought together governments from around the world to agree on coordinated actions to tackle climate change and accelerate action towards the goals of the Paris Agreement and the UN Framework Convention on Climate Change². For the ECB, the summit represented a vital opportunity to set out a clear path towards a zero-carbon world³. In this respect, the ECB pledged to contribute, within its field of responsibility, to decisive action by policymakers to implement the Paris

¹ Decision ECB/2004/3 of 4 March 2004 on public access to European Central Bank documents (OJ L 80, 18.3.2004, p. 42)

² See <https://ukcop26.org/>

³ See also <https://www.ecb.europa.eu/press/blog/date/2021/html/ecb.blog211104~b84ec56476.en.html>

Agreement and mitigate the consequences of climate change⁴. We are pleased to share with you a full list of documents published by the ECB in relation to COP26 (see Annex 2).

2. Identification and assessment of the requested documents

After having carefully examined your request in line with Decision ECB/2004/3 the ECB has identified three internal ECB documents of relevance to your application, in addition to the afore-mentioned published ECB documents. Annex 1 sets out the context for the preparations of the three documents. Following a thorough assessment of the three identified internal ECB documents, in line with Decision ECB/2004/3, we are glad to inform you that the ECB has decided that documents nn. 1 and 2, as listed in Annex 1, can be partially disclosed, subject to the redaction of very limited excerpts that are protected under the first sub-paragraph of Article 4(3) of the Decision (internal deliberations). Grounds for partial disclosure of the limited excerpts are explained in the following paragraphs. Document n. 3, as listed in Annex 1, can be fully disclosed.

(i) Confidentiality of documents drafted or received by the ECB for internal use as part of deliberations and preliminary consultations within the ECB

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, even after the decision has been taken, unless there is an overriding public interest in disclosure⁵.

The three identified internal ECB documents constitute internal briefing material presenting internal views, evaluations and opinions of ECB staff addressed to the members of the Executive Board for opinion forming. They are disclosed almost in their entirety. Only very limited excerpts in documents nn. 1 and 2, as listed in Annex 1, relating to staff's candid personal judgement/assumptions have been redacted. Disclosure of these limited excerpts, without further contextualisation, might be liable of misinterpretation and negatively impact the public and the fellow institutions' perception and understanding of the official ECB's stance on the potential future legislative initiatives, especially in view of the fact that the ECB has already publicly communicated its position in a clear, contextualised and transparent manner. By disclosing the limited excerpts presenting internal staff views, the ECB could consider itself potentially bound to take account of the internal views presented for opinion building by the members of the Executive Board.

It should be noted that the ECB decision making bodies may benefit from preliminary views and opinions provided by ECB experts to the extent that they are given free of any potential external constraints linked

⁴ See https://www.ecb.europa.eu/pub/pdf/other/ecb.pledge_climate_change_action211103~6af74636d8.en.pdf

⁵ In Case C-342/19 P, the CJEU has confirmed that “the wording of the first subparagraph of Article 4(3) of Decision 2004/258 cannot be read as reserving the protection contained in it only to documents linked to a specific decision-making process. That provision requires only that a document be used ‘as part of deliberations and preliminary consultations within the ECB’”. Therefore, documents falling within the scope of Article 4(3) “can also have a broader purpose and concern general matters” and cover “in a broad manner, documents linked to the ECB’s internal processes”, see para 71 [ECLI:EU:C:2020:1035].

to the risk of misinterpretation and misdirected public focus. Should such excerpts be disclosed, their authors and contributors might, in the future, refrain from conveying their candid and uncensored views, analysis or evaluation thus depriving the ECB decision making bodies of a key element in the opinion forming and decision-making process.

Based on the above, it is concluded that certain limited excerpts, in documents nn. 1 and 2 as listed in Annex 1, cannot be disclosed as they are protected by the first sub-paragraph of Article 4(3) of Decision ECB/2004/3.

3. *Overriding public interest in disclosure*

The exception laid down in Article 4(3) of Decision ECB/2004/3 must be waived if there is an overriding public interest justifying the disclosure of the identified excerpts. 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 interest. However, we could not identify in your application any elaborated arguments establishing the existence of an overriding public interest in the disclosure of the excerpts to which access is refused. Consequently, the prevailing interest in this case lies in protecting the confidentiality of internal consultations within the ECB and therefore access to the specific excerpts must be refused.

4. *Means of redress*

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

5. *Final remarks*

For the sake of good order, we would like to inform you that, in line with Article 10 of Decision ECB/2004/3, *“documents released in accordance with this Decision must not be reproduced or exploited for commercial purposes without the ECB’s prior specific authorisation. The ECB may withhold such authorisation without stating reasons”*.

Upon completion of this part of your request, we will proceed with the assessment of the request for access to point (ii) of your initial request, namely *“interview preparation documents, briefings, etc. for members of the Executive Board on climate change since 1 January 2021”*.

Yours sincerely,

[signed]


Director General Secretariat

[signed]


Head of the Compliance and Governance Division

Encl.

Annex 1: Identified documents

Annex 2: List of documents published by the ECB

Annex 1: Identified documents

Identified document	Assessment of disclosure
<p>1. <u>2021-10-19 - COP26 key messaging on climate action from external stakeholders</u></p> <p><i>This document was prepared by the Climate Change Centre for Executive Board member and Supervisory Board Vice-Chair Frank Elderson and may therefore include views that do not necessarily reflect those of the ECB. The document was prepared as background information ahead of Mr Elderson's attendance at COP26 and outlines key areas of climate action that are beyond the direct scope of the ECB's tasks, but that are nevertheless relevant to the ECB's climate-related activities and the overall transition towards a greener economy.</i></p>	<p>Partial disclosure: excerpts protected under the first sub-paragraph of Article 4(3) of Decision ECB/2004/3 (internal deliberations) have been redacted.</p>
<p>2. <u>2021-11-10 Key takeaways from COP26</u></p> <p><i>This document was prepared by the Climate Change Centre for the ECB Executive Board to provide an overview and preliminary assessment of the main outcomes of COP26 (for information only).</i></p>	<p>Partial disclosure: excerpts protected under the first sub-paragraph of Article 4(3) of Decision ECB/2004/3 (internal deliberations) have been redacted.</p>
<p>3. <u>Key takeaways from COP26 - excerpt of e-mail from Head of Climate Change Centre to EBC Executive Board, on 15 November 2021</u></p> <p><i>Excerpts from the email prepared by the Climate Change Centre for the ECB Executive Board delivering the key takeaways from COP26 and providing a preliminary summary of its main insights (for information only).</i></p>	<p>Ful disclosure.</p>

Annex 2: List of documents published by the ECB

1. [The ECB pledge on climate change action](#)
2. [Panel contribution by Frank Elderson at COP26 World Leaders' Summit Presidency Event on "Action on Forest and Land Use" \(2 November 2021\)](#)
3. [Keynote speech by Frank Elderson at the COP26 Finance Day Presidency Event on "A Financial System for Net Zero" \(3 November 2021\)](#)
4. [Interview with Frank Elderson, conducted by Francine Lacqua, Bloomberg TV \(3 November 2021\)](#)
5. [Blog post by Christine Lagarde, President of the ECB \(4 November 2021\)](#)