

Ms Nicoletta Forcheri

6 March 2019

LS/PT/2019/28

Request for public access to ECB documents

Dear Ms Forcheri,

Thank you for your email message of 1 February 2019 requesting access to the "Decision issued by the ECB on 1 January 2019 regarding Banca Carige".

Having carefully examined your request in line with Decision ECB/2004/3, we have identified one document, an ECB Decision, that is part of the administrative supervisory file relating to the ECB's supervisory activities concerning the possible adoption of early intervention measures in relation to Banca Carige.

We would like to recall that on 2 January 2019 the ECB published a press release informing the general public of the appointment of three temporary administrators and a three-member surveillance committee to take charge of Banca Carige and replace its Board of Directors¹. The decision to impose temporary administration is an early intervention measure aimed at ensuring continuity and pursuing the objectives of a strategic plan.

Following a thorough assessment of your request, in the light of the requirements established by Decision ECB/2004/3, we regret to inform you that access to this document cannot be granted (either in full or in part) since the identified document is covered by a general presumption of non-accessibility in accordance with Article 4(1)(c) of Decision ECB/2004/3 (*"the confidentiality of information that is protected as such under Union law"*).

<https://www.bankingsupervision.europa.eu/press/pr/date/2019/html/ssm.pr190102.en.html>. See also Italian Official Gazette
http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2019-02-09&atto.codiceRedazionale=19A00856&elenco30giorni=true.

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The following explains in greater detail the ECB's decision not to disclose the identified document.

General presumption of non-accessibility of the Banca Carige supervisory files

In line with the established European case law on State aid and established practice in litigation and competition investigations as well as in broad terms, the general presumption of non-accessibility to a file may be recognised on the basis that (a) the documents requested belong to the same category of documents or are documents of the same nature², and (b) access to the documents involved in certain procedures is incompatible with the proper conduct of those procedures. Furthermore, the general presumption of non-accessibility ensures that the integrity of the conduct of the procedure can be preserved by limiting intervention by third parties³.

Thus, when considering requests for public access to documents, the ECB applies the general presumption of non-accessibility precisely because of the need to protect its supervisory procedures (and to afford such supervisory procedures the benefit of protection similar to the case for EU competition procedures).

Confidentiality of information that is protected as such under EU law

Pursuant to Article 4(1)(c) of Decision ECB/2004/3, the ECB must refuse access to documents where disclosure would undermine the protection of the confidentiality of information that is protected as such under EU law.

The documentation to which access is sought relates to the ECB's exercise of its powers as the competent supervisory authority under the SSM Regulation⁴. The document, as part of a supervisory file, is covered by the professional secrecy obligations set out in EU legislation and in particular in Article 27 of the SSM Regulation, Article 53 et seq. of the CRD IV⁵. These obligations prevent the ECB from disclosing, among other things, information received from supervised entities as well as any supervisory assessment made on the basis of that information, and any steps taken with respect to an individual credit institution.

As regards the identified document, the ECB notes that (i) the document is part of the supervisory file and is not public⁶, and (ii) its disclosure would adversely affect the public interest in the smooth functioning of the system of prudential supervision.⁷

² See *Sweden and Turco v Council*, C-39/05 P and C-52/05 P, EU:C:2008:374, paragraph 50.

³ See *AlzChem AG v European Commission*, T-451/15, ECLI:EU:T:2017:588, paragraph 21 and the case cited in that paragraph. See also Opinion of Advocate General Wathelet, *LPN and Finland v Commission*, C-514/11 P and C-605/11 P, EU:C:2013:528, points 66, 68, 74 and 76.

⁴ 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).

⁵ 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).

⁶ The Court of Justice of the EU has confirmed that an unauthorised leak of confidential information does not in itself justify the disclosure of the documents requested in the context of an application under public access rules, see to this effect *International Management Group v Commission*, T 110/15, ECLI:EU:T:2016:322, paras 67-68.

⁷ See *Bundesanstalt für Finanzdienstleistungsaufsicht v Ewald Baumeister*, C-15/16, ECLI:EU:C:2018:464, para. 35.

On this last point, the ECB notes that professional secrecy requirements have been established to protect not only individual credit institutions but also the functioning of the banking system as a whole.⁸ Supervised entities must be able to trust that the supervisor will treat information confidentially, and this trust is essential to guaranteeing the flow of information between the supervised entities and the supervisory authority. Therefore, as established in Article 53 of the CRD IV, confidential information concerning credit institutions may be disclosed only in summary or aggregate form, in such a way that individual credit institutions cannot be identified. Hence the confidentiality of the identified document is protected under EU law.

Disclosure of confidential information related to the supervision of individual credit institutions by a competent authority is only permitted in the cases expressly mentioned in the CRD IV.⁹ None of these exceptions apply in the present case.

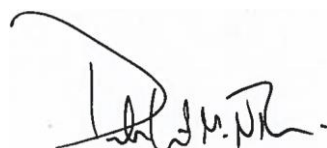
Taking into consideration the foregoing, the ECB has concluded that disclosure of the requested decision cannot be granted.

Other remarks

Finally, we would like to note that for transparency purposes and in view of its general interest, the ECB issued a press release with readily comprehensible information on the essential elements of the decision to appoint temporary administrators to take charge of Banca Carige while removing confidential supervisory information to comply with the professional secrecy rules governing supervisory work.

For the sake of good order, please be advised that, in line with 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".

Yours sincerely,



Pedro Gustavo Teixeira
Director General Secretariat



Margarita Louiza Karydi
Head of Compliance and Governance Division

⁸ See *Bundesanstalt für Finanzdienstleistungsaufsicht v Ewald Baumeister*, C-15/16, ECLI:EU:C:2018:464, para. 33; *Annett Altmann and Others v Bundesanstalt für Finanzdienstleistungsaufsicht*, C-140/13, ECLI:EU:C:2014:2362, paras. 31 to 33; and *Commune de Hillegom v Cornelis Hillenius*, Case 110/84, ECLI:EU:C:1985:495, para. 27.

⁹ See *Bundesanstalt für Finanzdienstleistungsaufsicht v Ewald Baumeister*, C-15/16, ECLI:EU:C:2018:464, para. 43.