

## NOTIFICATION FOR PRIOR CHECKING

**Date of submission: 3 October 2005**

**Case number: 2005/290**

**Notification of: European Central Bank**

**Legal basis: Article 27-5 of the regulation CE n° 45/2001<sup>(1)</sup>**

## INFORMATION TO BE GIVEN<sup>2</sup>

### 1/ Name and address of the controller

- 1) For ongoing administrative inquiries: The respective lead inquirer as determined by the Executive Board;
- 2) For closed administrative inquiries: The Director General Secretariat and Language Services.

European Central Bank  
Kaiserstrasse 29  
D-60311 Frankfurt am Main

### 2/ Organisational parts of the institution or body entrusted with the processing of personal data

- 1) For ongoing administrative inquiries: (Not applicable, because the respective lead inquirer will be determined ad hoc by the Executive Board; see Art. 4.5 draft AC);
- 2) For closed administrative inquiries: The Directorate General Secretariat and Language Services (see Art. 6.6 draft AC).

### 3/ Name of the processing

ECB internal administrative inquiries

<sup>1</sup> OJ L 8, 12.01.2001.

<sup>2</sup> Please attach all necessary backup documents

#### **4/ Purpose or purposes of the processing**

Conducting administrative inquiries where the administration has either itself become aware of possible breaches by ECB employees of their professional duties, or alternatively has been informed by ECB employees of such possible breaches. Administrative inquiries are conducted in order to clarify the facts (see Art. 4.4 draft AC).

#### **5/ Description of the category or categories of data subjects**

All staff members with permanent or fixed term contracts are subject to the obligations laid down in the “Statute of the European System of Central Banks and of the European Central Bank”, the “Conditions of Employment for staff of the ECB”, the “ECB Staff Rules” and the “Code of Conduct of the European Central Bank”; all staff members with a short-term contract are subject to the “Statute of the European System of Central Banks and of the European Central Bank”, the “Code of Conduct of the European Central Bank”, the “Conditions of Short-Term Employment” and the “Rules for Short-Term Employment”. Therefore all members of staff are potential data subjects for the relevant data processing operations. In addition, persons working for the ECB other than on the basis of employment contracts are also subject to this draft AC; in this case the respective agreements with such persons provides the legal basis for these inquiries (see Art. 2.4 draft AC).

#### **6/ Description of the data or categories of data (including, if applicable, special categories of data (Article 10) and/or origin of data).**

Basic personal data of staff members and data related to the conduct of internal administrative inquiries. The latter could be categorised as follows:

- 1) Personal information supplied to the lead inquirer on his/her request;
- 2) Personal information contained in transcripts and /or minutes of witnesses’ hearings and interviews;
- 3) Personal information contained in expertises requested from relevant business areas or external independent experts;
- 4) Personal information being processed in relation to requested access (which is only allowed under strict conditions; see Art. 6.11 and 6.13 draft AC) to electronic files, hard copy files or on-the-spot searches;
- 5) Personal information being processed in relation to requested interceptions (which is only allowed under strict conditions; see Art. 6.12 and 6.13 draft AC) of telephone conversations (traffic data or/and content data);
- 6) Personal information contained in the interim reports to the lead inquirer and/or in the final report of the lead inquirer and in all the documents annexed to the reports. Copies of all relevant documents and minutes of hearings, including the results of the panel’s voting, on-the-spot searches or any other inquiry acts performed by the person conducting the inquiry or the panel, shall be annexed to the reports.

## **7/ Information to be given to data subjects**

Staff members are informed in specifically organised “induction seminars” about the most important provisions concerning the professional duties laid down in the “Conditions of Employment for staff of the ECB” and the “ECB Staff Rules” or “Conditions of Short-Term Employment” and the “Rules for Short-Term Employment”, when they start working at the ECB. The relevant documents are also published on the ECB’s intranet site. The ECB’s Staff Committee is being consulted on the draft Administrative Circular “On Internal Administrative Inquiries”. Upon finalisation of this consultation, and having received the EDPS’ opinion, the draft will be adopted by the Executive Board, subsequent to which all staff members will be informed thereof per e-mail (according to the procedure laid down in Art. 7 of Administrative Circular 01/2004 on “ECB Legal Instruments”). The Administrative Circular will then also be published on the ECB’s intranet site. Staff members can contact the Controller for any additional information falling under the scope of Art. 11 and 12 of the Regulation.

## **8/ Procedures to grant rights of data subjects**

a) As to the right of access (Art. 13):

- 1) In the course of an administrative inquiry data subjects shall contact the relevant Controller who is the respective lead inquirer in order to exercise their rights. The Controller can restrict the right of access, whenever this would be harmful to the administrative inquiry according to Art. 20 of Regulation EC No 45/2001. In accordance with Art. 7.1 of the draft AC, conclusions referring to any persons may not be drawn before they have been given the opportunity to express their views on all the facts concerning them. Also, Art. 7.3 of the draft AC requires an employee who is the subject of an inquiry to be granted access to the relevant documents.
- 2) Once the administrative inquiry has been closed data subjects shall contact the relevant Controller who is the Director General Secretariat and Language Services.

b) As to the exercise of all other rights laid down in Section 5 of the Regulation:

- 1) In the course of an administrative inquiry data subjects shall contact the relevant Controller who is the respective lead inquirer in order to exercise their rights. The Controller can restrict one or more of these rights, whenever this would be harmful to the administrative inquiry according to Art. 20 of Regulation EC No 45/2001.
- 2) After the administrative inquiry has been closed data subjects shall contact the relevant Controller who is the Director General Secretariat and Language Services.

## **9/ Automated / manual processing operation**

Personal data related to administrative inquiries can undergo both automated and manual processing operations depending on the category they belong to:

(a) Manual Processing operations can take place:

Upon personal data belonging to the categories 1-6 (as described above).

(b) Automated processing operations can take place:

Upon personal data belonging to the categories 1-6 (as described above).

All steps of the administrative inquiry, including any findings and documents shall be recorded, documented and filed by the lead inquirer in accordance with the rules laid down in the separate Administrative Circular 07/2004 on the management and confidentiality of ECB documents.

## **10/ Legal basis of the processing operation**

Conditions of Employment for staff of the ECB/ Conditions of Short-Term Employment/ ECB Staff Rules/ Rules for Short-term Employment/ Statute of the European System of Central Banks and of the European Central Bank/ Code of Conduct of the European Central Bank/Administrative Circular on Internal Administrative Inquiries (once it has been adopted). In accordance with Art. 11.2 of the ECB's Rules of Procedure, Administrative Circulars are legally binding for ECB employees.

## **11/ The recipients or categories of recipient to whom the data might be disclosed**

The only recipients of data related to internal administrative inquiries can be:

- a) Members of the Executive Board;
- b) Members of the inquiry panel;
- c) Experts of relevant ECB business areas or external independent experts, if so requested;
- d) Members of staff who, for professional reasons, need to have access to the relevant information and whose access is authorised by the lead inquirer (or by the Director General Secretariat and Language Services after the administrative inquiry has been finalised). These parties will be subject to the legal obligation of professional secrecy (see inter alia Art. 5.8, 6.3 and 6.13 of the draft AC).

Where an administrative inquiry is followed by other steps, the data will be transferred to the competent addressee, for example, the Directorate General Human Resources Budget and Organisation in the case of the initiation of a disciplinary procedure.

**12/ General indication of the time limits**

**for blocking:**

There is no special period foreseen for blocking the data.

**and/or**

**for erasing:**

Where an administrative inquiry is not followed by any other step the administrative inquiry file shall be kept no longer than 24 months from the year of closure of the administrative inquiry procedure. This is deemed to be a reasonable period in order to enable the ECB to deal with any potential legal claim etc).

In case of interception of phone conversations, the recordings shall be regularly deleted and at the latest when the case is closed (see Art. 6.12 AC).

**of the different categories of data** (*Please, specify the time limits for every category, if applicable*)

n/a

**13/ Historical, statistical or scientific purposes**

*If you store data for longer periods than mentioned above, please specify, if applicable, why the data must be kept under a form which permits identification.*

There are no specific rules or procedures in place concerning longer storage periods for historical, statistical or scientific purposes.

**14/ Proposed transfers of data to third countries or international organisations**

There are no proposed transfers of data to third countries or international organisations.

**15/ The processing operation presents specific risk which justifies prior checking (Please describe):**

**as foreseen in:**

**X Article 27.2.(a)**

*Processing of data relating to health and to suspected offences, offences, criminal convictions or security measures,*

**X Article 27.2.(b)**

*Processing operations intended to evaluate personal aspects relating to the data subject,*

**↑ Article 27.2.(c)**

*Processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes,*

**↑ Article 27.2.(d)**

*Processing operations for the purpose of excluding individuals from a right, benefit or contract,*

**↑ Other (general concept in Article 27.1)**

**16/ Comments**

The present notification does not refer to processing operations related to cases falling under the scope of:

- a) Decision of the ECB of 3 June 2004 concerning the terms and conditions for European Anti-Fraud Office investigations of the ECB, in relation to the prevention of fraud, corruption and any other illegal activities detrimental to the European Communities' financial interests and amending the Conditions of Employment for Staff of the ECB (this Decision sets the framework of independent investigations by OLAF in the ECB); or
- b) any ECB, Community or national legal act providing for a more specific procedure and having binding effect on the ECB other than the draft Administrative Circular on "Internal Administrative Inquiries".

**Place and date:** Frankfurt am Main, 29 September 2005

**Data Protection Officer:** Wolfgang Sommerfeld *[signed]*

**Institution or body:** European Central Bank