

**REGISTER NUMBER: 139**

**NOTIFICATION FOR PRIOR CHECKING**

Date of submission: 18 December 2006

Case number: 2006-582

Institution: European Central Bank

Legal basis: article 27-5 of the regulation CE 45/2001<sup>(1)</sup>

(1) OJ L 8, 12.01.2001

**INFORMATION TO BE GIVEN<sup>(2)</sup>**

(2) Please attach all necessary backup documents

1/ Name and address of the controller

Director General Human Resources, Budget and Organisation (Koenraad de Geest)  
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

Directorate General Human Resources; Budget and Organisation - Compensation and Staff Relations  
Division;  
Directorate Internal Audit

3/ Name of the processing

Performance of compliance checks as regards Insider Trading Rules

4/ Purpose or purposes of the processing

In order to allow the ECB's External Auditor (who acts as a processor) to perform the annual checks as regard compliance of staff members and members of the Executive Board with the ECB's Insider Trading Rules, the Director General Human Resources, Budget and Organisation has to keep in sealed envelopes the information provided by the Members of the Executive Board and the ECB staff members who have access to inside information concerning the monetary or exchange rate policies and/or the financial operations of the ECB . Every year a selection of the sealed envelopes (sample) will be forwarded upon request to the ECB's External Auditor (who acts as a Processor). The ECB's External Auditor may ask members of the Executive Board and members of staff (persons in the sample) to provide further detailed information and documentation (bank account statements), and may report any cases of non-compliance to the ECB's Directorate Internal Audit for further investigation.

5/ Description of the category or categories of data subjects

Executive Board Members and all ECB staff members who, by virtue of the exercise of their employment, profession or duties, have, or are deemed to have access to inside information concerning the financial operations of the ESCB (Art. 1.2.13 SR) or concerning the monetary or exchange rate policies of the ECB or the financial operations of the ESCB (Art. 1.2.14 SR).

The categories of members of staff who have access to inside information regarding concerning the monetary or exchange rate policies of the ECB and/or the financial operations of the ESCB and of the ECB are respectively listed to the Annexes I and II of the ECB Staff Rules and the categories of short-term contract employees respectively to the Annexes II and II of the Staff Rules for Short-Term Employment.

Under Article 1.2.18 of the Staff Rules and 1.2.18 of the Staff Rules for Short-Term Employment, the obligations of the member of staff to provide the information about his/her financial transactions shall continue to apply beyond the termination of their employment with the ECB for six months following such termination.

Article 1.2.9 of the Staff rules and 1.2.9 of the Staff Rules for Short-Term Employment would expand the list of potential data subjects to the third persons, such as spouses, recognised partners, parents, children, other family members, colleagues, etc. who conferred upon the insiders power of attorney in connection to bank accounts.

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

Under Article 1.2.14 of the Staff Rules, the respective ECB staff member shall provide:

- a list of his/her bank accounts, including custody accounts and accounts with stock brokers;
- a list of any powers of attorney which third parties have conferred upon him/her in connection with their bank accounts, including custody accounts;
- his/her general directives or guidelines to third parties to whom responsibility for managing his/her investment portfolio has been delegated;

If the staff member is selected by the ECB's External Auditor and forms therefore part of the annual "sample" to be checked he/she shall in addition provide the following documentation for a period of six consecutive months, as specified in the annual request:

- any sale or purchase of assets (including transferable securities, foreign currency, and gold) or rights (including rights under derivatives contracts or closely related financial instruments) conducted by the member of staff at his/her own risk and for his/her own account, conducted by him/her at the risk and for the account of third parties as defined in Article 1.2.9 of the Staff Rules;
- statements of bank accounts, including custody accounts and accounts with stock brokers; the conclusion or the amendment of mortgages or other loans at his/her own risk and for his/her own account, or by him/her at the risk and for the account of third parties as defined in Article 1.2.9 of the Staff Rules;
- his/her dealings in relation to retirement plans, including the ECB retirement plan.

The same categories of data have also to be provided by Short-term contract employees in accordance with Article 1.2.14 of the Rules for Short-term Employment.

Under Article 1.2.15 of the Staff Rules in the event that the ECB's External Auditor has reasonable reasons to believe that the Staff Rules, including the advice and interpretative ethical rules developed by the Ethics Adviser have not been respected, to request the following:

- 1) all his/her bank accounts, including custody accounts and accounts with stock brokers; the conclusion or the amendment of mortgages or other loans at his/her own risk and for his/her own account, or by him/her at the risk and for the account of third parties as defined in Article 1.2.9 of the Staff Rules;
- 2) all his/her investment transactions concerning assets (including transferable securities, foreign currency, and gold) or rights (including rights under derivatives contracts or closely related financial instruments) that she has performed at his/her own risk and for his/her own account, or at the risk and for the account of third parties as defined in Article 1.2.9 of the Staff Rules, during the period indicated by the ECB's External Auditor;
- 3) his/her dealings in relation to retirement plans including the ECB retirement plan;
- 4) list of any powers of attorney which third parties have conferred upon members of staff in connection with the bank accounts, including custody accounts.

The same categories of data have also to be provided also by Short-term contract employees in accordance with Art. 1.2.15 of the Rules for Short-term Employment.

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

a) Staff members are informed about the most important provisions 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, which describe the rules and procedures related to the prevention of insider trading, when they start working at the ECB in specifically organized "induction seminars". The relevant documents are also published on the ECB's intranet site.

b) In the form for the "Report to the External Auditor of the ECB" data subjects can find the following information text:

"Information to be given to the data subject according to Art. 11 Regulation (EC) 45/2001:

The External Auditor of the ECB receives the personal data (PD) provided in accordance with Art.1.2 of the Staff Rules/Rules for Short-term Employment from the ECB and processes them on behalf of the Controller (Director General Administration). The processing is undertaken in line with Regulation (EC) 45/2001. PD falling under Art. 1.2.14 paragraphs 1-3 are stored until the expiry of two full calendar years after your insider status has ceased, whereas PD falling under Art. 1.2.14 paragraph 4 and Article 1.2.15 are stored until a report to the External Auditor on a given calendar year has been submitted. In case of non-compliance (see Art. 1.2.16) PD are stored as long as required. You have the right to access and rectify the PD provided, and have recourse at any time to the European Data Protection Supervisor".

c) A member of staff with any questions on the application of the rules can discuss the matter with the Ethics Adviser. Under Article 1.2.17 of the Staff Rules, the conduct of private financial transactions that is fully in conformity with the advice and interpretative ethical rules developed by the Ethics Adviser shall not give rise to a disciplinary procedure for non-compliance by the member of staff with his/her obligations; such advice shall, however, not release the member of staff from his/her external liability.

d) Under Article 1.2.16 of the Staff Rules the member of staff concerned shall be informed in the case the ECBs External Auditor intends to report about his/her non-compliance with the rules; and he/she shall have the right to make his her views on the report to the ECBs External Auditor.

A report prepared by the ECBs External Auditor, including the information therein supplied by the member of the staff member concerned, may be used in a disciplinary procedure as set out in Part 8 of the Conditions of Employment for the Staff of the European Central Bank and, to the extent required by applicable law, in any prosecution by external authorities regarding alleged violations of national criminal laws.

e) The same information right is also granted to the Short-Term employees in accordance with Art. 1.2.16 of Rules for Short-term Employment.

f) For any additional information falling under the scope of Art. 11 and 12 of the Regulation, data subjects have to contact the respective Controller.

#### 8/ Procedures to grant rights of data subjects (*rights of access, to rectify, to block, to erase, to object*)

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

1) In accordance with Article 1.2.14 and 1.2.15 of the ECB Staff Rules the information in sealed envelopes shall be retained by the Director General Human Resources, Budget and Organisation, who may pass this information, provided that the confidentiality will be retained, to the ECBs External Auditor at the latter's request. Taken into consideration that the sealed envelopes are provided by the staff members the right of access to the sealed envelopes makes sense only in conjunction with the exercise of the right of correction as it is described below under b).

2) Under Article 1.2.16 of the Staff Rules the member of staff concerned shall be informed in the case the ECBs External Auditor intends to report about his/her non-compliance with the rules; and he/she shall have the right to make his her views on the report to the ECBs External Auditor.

A report prepared by the ECBs External Auditor, including the information therein supplied by the member of the staff concerned, may be used in a disciplinary procedure as set out in Part 8 of the Conditions of Employment for the Staff of the European Central Bank and, to the extent required by applicable law, in any prosecution by external authorities regarding alleged violations of national criminal laws.

b) As to the exercise of all other rights laid down in Section 5 of the Regulation, the data subject shall contact the respective Controller.

As concerns data contained in the sealed envelopes, the right to rectify inaccurate or incomplete personal data can be exercised by sending to the Controller a new sealed envelope. Article 1.2.14 makes it even mandatory for insiders to update at their own initiative the information they gave. The Controller returns the previous list deposited in a sealed envelope to the insider.

#### 9/ Automated / Manual processing operation

##### Manual processing operation:

Keeping and forwarding the sealed envelopes provided by the data subjects.

##### Automated processing operation:

n/a

10/ Storage media of data
<p>11/ Legal basis and lawfulness of the processing operation</p> <p>a) Conditions of Employment for Staff of the European Central Bank (especially Article 4(a) European Central Bank Staff Rules (especially Articles 1.2.13 until 1.2.18), Conditions of Short-term Employment (especially Part I, Art. 4) and the Rules for Short-term Employment (especially Art. 1.2.13. until 1.2.18.). Article 3.7.3 of the ECB Code of Conduct.</p> <p>a) The legal basis for the processing operations undertaken by the External Auditor, who is acting as a processor in the meaning of Art. 23 of the Regulation, are the relevant clauses in the contract between the ECB and the External Auditor.</p>
<p>12/ The recipients or categories of recipient to whom the data might be disclosed</p> <p>In accordance with Article 1.2.14 and 1.2.15 of the ECB Staff Rules the information in sealed envelopes shall be retained by the Director General Human Resources, Budget and Organisation, who may pass this information, provided that the confidentiality will be retained, to the ECBs External Auditor at the latter's request. Furthermore, the persons in the sample forward to the external auditor at the latter's request any additional information or documentation the external auditors requests. Consequently the only recipient of the data is the ECB's External Auditor.</p>
<p>13/ retention policy of (categories of) personal data</p> <p>Personal data falling under Art. 1.2.14 paragraphs 1-3 of the Staff Rules/Rules for Short-term Employment are stored until the expiry of two full calendar years after the individual's insider status has ceased, whereas personal data falling under Art. 1.2.14 paragraph 4 and Article 1.2.15 are stored until a report by the ECB's External Auditor on a given calendar year has been submitted. In case of non-compliance (see Art. 1.2.16) personal data stored as long as required.</p>
<p>13 a/ time limits for blocking and erasure of the different categories of data (on justified legitimate request from the data subject) (Please, specify the time limits for every category, if applicable)</p> <p>There is no special period foreseen for blocking or erasure of the data.</p>
<p>14/ Historical, statistical or scientific purposes</p> <p><i>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,</i></p> <p>There are no specific rules or procedures in place concerning longer storage periods for historical, statistical or scientific purposes.</p>
<p>15/ Proposed transfers of data to third countries or international organisations</p> <p>There are no proposed transfers of data to third countries or international organisations.</p>

16/ 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)

17/ Comments

Chapter V. "DATA PROTECTION ISSUES" of the Terms of Reference for the review of private financial activities concerning ECB members of staff reads:

[...]

V.3. The External Auditor undertakes to allow the ECB's data protection officer to verify that the provisions of the Regulation are observed, in particular by providing on request information on the manner in which the personal data is processed.

[...]

PLACE AND DATE: Frankfurt am Main, 13 December 2006

DATA PROTECTION OFFICER: Wolfgang Sommerfeld *[signed]*

INSTITUTION OR BODY: European Central Bank