NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 15/04/2013

CASE NUMBER: 2013-0413

INSTITUTION: ECB

LEGAL BASIS: ARTICLE 27-5 OF THE REGULATION CE N° 45/2001([1])

INFORMATION TO BE GIVEN[2]

1/   NAME AND ADDRESS OF THE CONTROLLER

European Central Bank
Directorate General Human Resources, Budget & Organisation
Division Recruitment & Compensation
Kaiserstrasse 29
60313 Frankfurt am Main
GERMANY

2/   ORGANISATIONAL PARTS OF THE INSTITUTION OR BODY ENTRUSTED WITH THE PROCESSING OF PERSONAL DATA

Directorate General Human Resources, Budget and Organisation (further '**DG/H'**), Recruitment and Compensation Division (further '**RCO**' Division)

3/   NAME OF THE PROCESSING

Data processing operations related to handling of data on all forms of differentiated working patterns and of absences (except absence for illness or accident of staff members, which is dealt with in a separate prior checking notifications filed with the EDPS, see Case 2012-0792 on the accident and

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[1] OJ L 8, 12.01.2001.

[2] **Please attach all necessary backup documents**

occupational disease procedure, Case 2004-277 on the recording of absences and Case 2006-240+241 on the ECB medical files): part-time, overtime and on-call duties, shift work duties, teleworking, annual leave, maternity and adoptive leave, parental leave, special leave for marriage (staff member, family member of relative), special leave due to death (family member of relative), special leave due to birth or adoption of a child, special leave for change of residence of the member of staff, leave for sickness of dependent child and sickness of family/relative, special leave for hospitalisation of dependent child, special leave for travelling and unpaid leave.

4/   PURPOSE OR PURPOSES OF THE PROCESSING

These forms of working pattern and absences are foreseen in the (thereafter called) '**ECB Rules and Orientations**' applicable at the ECB. These comprise:

- The ECB Conditions of Employment (CoE): Define all the provisions that govern the employment relationship with the ECB. They are proposed by the Executive Board, and adopted by the Governing Council after information of the General Council.
- The ECB Staff Rules (SRs): Complement the Conditions of Employment and give more precise information on the provisions that govern the employment relationship with the ECB.
- Conditions of Short-term Employment (in the case of staff members with a short-term contract)
- Rules for Short-term Employment (similar as the ECB Staff Rules but only applicable to staff having a short-term contract).
- Conditions of the Graduate Programme (for participants in the ECB's Graduate Programme).
- Other administrative rules (e.g. Operational Guidelines, ECB Mobility Framework).
- ECB Intranet.

The purpose of the processing operation of personal data in the context of working time and leave is to implement the relevant legal and practical provisions laid in the ECB Rules and Orientations, and to monitor their implementation, including over time. For this reason, RCO has to record all the above-mentioned working patterns and absences at the ECB. According to the rules mentioned in the previous section, there are distinctive procedures followed according to the type of working pattern and absence.

The specific main reasons for processing the above information are as follows:

Part-time: Monitor length of part-time; relevant for payroll and pensions
Overtime and on-call duties: relevant for time accounts and payroll; monitoring of Working Time Directive
Shift work duties: relevant for payroll; monitoring of compliance with the Working Time Directive
Teleworking: Check time limits per month (maximum number of days)
Annual leave: Check time limits per year (annual entitlement and minimum periods of rest); potentially payments on termination of contract
Maternity and adoptive leave: Check entitlements and absences
Parental leave: Monitor time limits and payroll relevance (as some payments remain); relevant for pensions
Special leave for marriage (staff member, family member of relative): Check entitlements and absences
Special leave due to death (family member of relative): Check entitlements and absences

Special leave due to birth or adoption of a child: Check entitlements and absences
Special leave for change of residence of the member of staff: Check entitlements and absences
Leave for sickness of dependent child: Check entitlements and absences
Leave for sickness of family/relative: Check entitlements and absences

Special leave for hospitalisation of dependent child: Check entitlements and absences
Special leave for travelling (linked to another form of special leave): Check entitlements and absences
Unpaid leave: Check the nature of the request; check time limits per life of the contract

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5/   DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

The data subjects for the relevant data processing operations are **staff members** with permanent or fixed term contracts, staff members with a short-term contract and participants in the Graduate Programme.

The following categories of data subjects are covered:

- Members of staff: according to the definition given in Article 1 and Article 9 of the Conditions of Employment for Staff of the European Central Bank:
"1. For the purposes of these Conditions of Employment, "member of staff" of the European Central Bank (hereinafter referred to as the ECB) shall mean any person who has countersigned an employment contract appointing him/her for an indefinite period or a definite period of more than one year to a position within the ECB and who has taken up his/her appointment";
"9. (a) Employment relations between the ECB and its members of staff shall be governed by employment contracts issued in conjunction with these Conditions of Employment. The Staff Rules adopted by the Executive Board shall further specify the application of these Conditions of Employment. The employment relations between the European Central Bank and its members of staff shall be subject to mobility in the interest of the service".

- Short-term employees: according to the definition given in Article 1 of the Conditions of Short-Term Employment of the European Central Bank:
"1. (a) For the purposes of these Conditions of Short-Term Employment, a "short-term contract employee" of the European Central Bank (hereinafter referred to as the ECB) shall mean any person who has countersigned an employment contract appointing him/her for a period of less than one year to a position within the ECB and who has taken up his/her appointment.
(b) A "short-term contract employee" shall also mean any person who is appointed to a position or who has, and continues to have, for the duration of the assignment at the ECB, an employment contract with (i) a national central bank of the ESCB, (ii) any other employer performing central banking tasks; or (iii) an international governmental organisation, and for the duration of their assignment to the ECB entered into an employment contract with the ECB. Such employment contract appointing a short-term contract employee to the ESCB/IO programme shall be limited to a maximum period of 36 months, including any extension.
International governmental organisations are defined as non-profit organisations which are created or recognised by States or by organisations which themselves were created by States and are entrusted with the performance of tasks in the public interest".

- Participants in the Graduate Programme of the European Central Bank .according to the definition given in Article 1 and 2 of the Conditions of the Graduate Programme of the European Central Bank:
"1. For the purposes of these Conditions of the Graduate Programme of the ECB (hereinafter the 'Graduate Programme Conditions'), a participant in the graduate programme (hereinafter 'graduate

programme participant') shall mean any person who has countersigned an employment contract appointing him/her to the ECB's graduate programme and who has taken up this appointment.

2. The Conditions of Employment for Staff of the European Central Bank (hereinafter the 'Conditions of Employment') shall apply to graduate programme participants, unless otherwise indicated in these Graduate Programme Conditions".

Relatives/dependents of the above categories: according to the aforementioned statutory provisions, leave related to the relatives/dependants of the staff referred to above.

6/ DESCRIPTION OF THE DATA OR CATEGORIES OF DATA

The documents requested from the data subjects, and the registers made to record/track the cases of differentiated working patterns and the absences, are as follows:

Part-time: Application form setting out the reasons for the request; Subsequent confirmation letter; Entries in ISIS
Overtime and on-call duties: Overtime/on-call sheets signed or approved electronically or on paper by the local manager; Entries in ISIS
Shift work duties: Shift sheets signed or approved electronically or on paper by the local manager; Entries in ISIS
Teleworking: Entries in ISIS
Annual leave: Entries in ISIS
Maternity and adoptive leave: Doctor's certificate or adoption documents; Subsequent confirmation letter; Entries in ISIS
Parental leave: Application form; Subsequent confirmation letter; Entries in ISIS
Special leave for marriage (staff member, family member of relative): Marriage certificate or other document containing the names of both parties in the marriage; Entries in ISIS
Special leave due to death (family member of relative): Death certificate or other doc containing the name of the family member/relative; Entries in ISIS
Special leave due to birth or adoption of a child: Birth / adoption certificate; Entries in ISIS
Special leave for change of residence of the member of staff: "Anmeldungsformular" containing the new address; Entries in ISIS
Leave for sickness of dependent child: Medical certificate; Entries in ISIS
Leave for sickness of family/relative: Medical certificate; Entries in ISIS
Special leave for hospitalisation of dependent child: Medical certificate; Entries in ISIS
Special leave for travelling (linked to another form of special leave): Travel documents; Entries in ISIS
Unpaid leave: Application form; Subsequent confirmation letter; Entries in ISIS

ISIS stands for "Integrated data Streamlined processes Information Sharing" and it represents the ECB data storage system to manage HR information (SAP system).

It should be noted that the ECB does **not** operate a Flexitime regime.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

Data subjects are informed about the most important provisions laid down in the ECB Rules and Orientations (which describe the rules and procedures concerning for all kinds of working patterns and absences) when they start working at the ECB in specifically organized "induction seminars". The

relevant documents (CoE, SRs, etc., including any relevant forms) are also published on the ECB's Intranet site, which is the main source of sharing information with the data subjects. For any additional information falling under the scope of ECB Rules and Orientations, the data subjects can also contact their DG/H contact in the HR Operations Team or simply call the HR hotline (to be redirected to the HR operations team).

The ECB is in the process of elaborating and fine-tuning a comprehensive data privacy statement, to be incorporated in the various forms and, in case the input is inserted directly by the staff members, also in ISIS.

8/   PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

(Rights of access, to rectify, to block, to erase, to object)

In accordance with Article 4(1)(d) of Regulation No 45/2001, the ECB will make every effort to ensure that the data are accurate and, where necessary, kept up to date and that data which are inaccurate or incomplete are updated and/or corrected.

Data subjects can exercise their data subjects' rights in accordance with Article 9 "*Exercise of data subjects' right*" of the **ECB Data Protection Implementing Rules**:
"*1. Further to their right to be appropriately informed about any processing of their personal data, data subjects may approach the relevant controller to exercise their rights pursuant to Articles 13 to 19 of Regulation (EC) No 45/2001, as specified below.*
(a) These rights may only be exercised by the data subject or their duly authorised representative. Such persons may exercise any of these rights free of charge.
(b) Requests to exercise these rights shall be addressed in writing to the relevant controller. The controller shall only grant the request if the requester's identity and, if relevant, their entitlement to represent the data subject have been appropriately verified. The controller shall without delay inform the data subject in writing of whether or not the request has been accepted. If the request has been rejected, the controller shall include the grounds for the rejection.
(c) The controller shall, at any time within three calendar months of receipt of the request, grant access pursuant to Article 13 of Regulation (EC) No 45/2001 by enabling the data subject to consult these data on-site or to receive a copy thereof, according to the applicant's preference.
(d) Data subjects may contact the DPO in the event that the controller does not respect either of the time limits in paragraphs (b) or (c). In the event of obvious abuse by a data subject in exercising their rights, the controller may refer the data subject to the DPO. If the case is referred to the DPO, the DPO will decide on the merits of the request and the appropriate follow-up. In the event of disagreement between the data subject and the controller, both parties shall have the right to consult the DPO".

Thus, in principle, the access to all documents contained in the files has to be granted within a maximum period of three months following the receipt of the request.

In accordance with Article 1.1.3 of the ECB Staff Rules / Rules for Short-term Employment, data subjects shall have the right at any time, even after leaving the ECB, to (read) access his/her personal file.

Once the original documents are incorporated in the personal files, the general rules set out in Article 7 of the Conditions of Employment / Article 12 Conditions for Short-term Employment and Article 1.3 of the ECB Staff Rules / Rules for Short-term Employment apply. According to these articles,

each data subjects has the right at any time, even after leaving the ECB, to (read) access his/her personal file.

As for the entries in ISIS, all data subjects and the direct line manager of the relevant staff have (read only) access in ISIS to the overview of the relevant individual information on:

- Part-time patterns
- Compensatory time for overtime and annual leave quotas and their use
- Overtime, on-call and shift work payments
- Dates of absences due to teleworking, annual leave, maternity and adoptive leave, parental leave, special leaves, leave for sickness of child/family/relative and unpaid leave

Otherwise, a limited number of RCO employees have dedicated access/rectification/block/erase rights in ISIS, depending on a functional need-to-know basis. These employees are subject to the legal obligation of professional secrecy.

9/   AUTOMATED / MANUAL PROCESSING OPERATION

The entries in the 'working patterns' and 'absences'-modules in ISIS are made in some cases directly by the data subjects concerned (annual leave, teleworking) and, in the remaining cases, by RCO staff. Such entries in ISIS allow the subsequent automation of information to produce individual and aggregated reports.

The procedures to process application forms and memos, confirmation letters, signed sheets, certificates and travel documents are not automated in ISIS. These have to be delivered in printout or electronically by the staff members via e-mail to RCO, which then uploads their electronic versions in the (digital) personal files.

10/   STORAGE MEDIA OF DATA

Only the contractual documentation (e.g. changes in the work pattern) and the medical certificates are physically stored as paper records in locked cabinets and are part of a staff member's personal file. Medical certificates and related documents required for the application of the Conditions of Employment shall be an integral part of a member of staff's personal file but shall be separately stored in the Directorate General Human Resources, Budget and Organisation. This part of the personal file hosting the medical certificates and related documents should not be confused with the "Medical File" which is not part of the personal file and is retained by the ECB's Medical Adviser, who will be solely responsible for it.

Otherwise, information is only stored in electronic form in ISIS.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

Legal basis of the processing operation
 - Article 36 of the Statute of the European System of Central Banks and of the European Central Bank
- Article 21 of the Decision of the European Central Bank of 19 February 2004 adopting the Rules of Procedure of the European Central Bank
- Conditions of Employment for staff of the ECB (in particular 7) / Conditions of Short-term Employment
- ECB Staff Rules / Rules for Short-term Employment

12/ THE RECIPIENTS OR CATEGORIES OF RECIPIENT TO WHOM THE DATA MIGHT BE DISCLOSED

As mentioned above, for the entries in ISIS, all staff members have (read only) access in ISIS to the overview of their individual information on:

- Time patterns
- Compensatory time for overtime
- Overtime, on-call and shift work payments
- Dates of absences due to teleworking, annual leave, maternity and adoptive leave, parental leave, special leaves, leave for sickness of child/family/relative and unpaid leave

Otherwise, a limited number of employees in RCO have access to all or parts of the information in ISIS, depending on a functional need-to-know basis. These staff members are subject to the legal obligation of professional secrecy.

Furthermore, the line management has also access to the numeric leave data in ISIS based.

Transfers of data might occur within the institution such as to Legal Services, the ECB Medical Office or to the respective bodies in the context of an administrative inquiry or disciplinary proceedings in accordance with the relevant rules and if necessary for the performance of their tasks and duties.

The same applies in case of external transfers of data to other EU bodies/institutions such as the EDPS, the European Ombudsman or the EU Civil Service Tribunal.

More in generally, with regard to the personal data contained in the personal file and in ISIS, according to article 1.1 of the Staff rules/Rules for Short-term Employment, the only recipients of the documents in the personal file can be:
a) The member of staff concerned
b) Members of the Executive Board;
c) Members of staff who, for professional reasons, need to have access to the information contained in the file (see above: some RCO employees) and whose access is authorised by the Director Human Resources. These parties are subject to the legal obligation of professional secrecy;
d) A member of staff may authorise DG/H - subject to the approval of the Executive Board - to make his/her personal file available to third parties.

13/   RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

To date, all information is currently kept for 10 years after the ceasing of the staff member's employment with the ECB or after the last ECB pension payment by the ECB(Article 1.1.5 of the Staff Rules – '**general retention rule for the personal file'**) The exception to this are the medical certificates and relating documents required for the application of the Conditions of Employment which are currently retained for a maximum period of five years commencing on the date of their submission (also Article 1.1.5 of the Staff Rules).

For the future, the ECB considers that the following retention periods could be applied depending on the type of leave and the purposes for which the data are collected and processed:

a. **Sick leave**: the ECB commented on the draft Guidelines in this respect and notes that this issue is still subject to further discussions between the EDPS and the College of the Heads of Administrations or any of its sub-committees. The following regime is proposed: a retention period of **five years** would remain to be applicable as currently foreseen in the Staff Rules.

In addition, for the exercise and defence of legal claims in regard to medical cases where the medical consequences of prolonged exposure to certain substances (like asbestos) occurs after a long period, all sick leave data would be **transferred to the ECB Medical Centre**. Such transfer would imply that the ECB would not have recourse to such medical data but only the Medical Adviser would be able to access the data for the above purpose and where need be to issue a medical opinion in this respect. The data held by the Health and Safety function in the Directorate General Human Resources would be destroyed following its transfer to the Medical Centre. This procedure would be properly reflected in the ECB statutory framework.

b. **Annual leave**: for the time being the above-referred general retention rule for the personal file remains applicable due to technical constraints of the ISIS system hosting this type of data. In particular, if the individual data after X years is deleted and the absence quota are locked (so that the deletion does not affect it and makes it all available again), the absence quota could no longer be used by the staff member. This implies that staff members entitled to leave days which were not taken in the previous years, would not be able to draw on those lave days and therefore would not be able to claim them.

The ECB is committed to implement for the future a limited retention period for the annual leave according to the following principles, subject however to finding an effective and economically acceptable technical solution. This would imply that the carry-over totals (leave not taken per relevant year) data in ISIS would be retained until leaving the service; the detailed info on the

leave would only be retained up to **two years** (amongst others to guarantee local management to apply a fair and coordinated holiday policy and to have the required data for the preparation of the next annual HR Report for statistical purposes). Anonymised and/or aggregated data may also need to be kept for a longer period.

c. **Types of leave with budgetary implications**: a retention period of **five years** would be applicable for audit purposes and to be able to carry out retroactive calculations and payments through the IT SAP salary system. Thereafter, the records will be deleted and the retroactive calculations blocked to a maximum of five years. Any physical supporting documentation would be deleted immediately following the expiry of the internal recourse procedures in relation to these payments:

> a. Paid time-off as compensation for overtime worked
> b. Overtime and on-call duties
> c. Shift work duties

d. **Leave relevant for the pension entitlement and calculation**: follows the g**eneral retention rule for the personal file** and is part of the personal file (contractual status)

> a. Part-time:
> b. Parental leave:
> c. Unpaid leave:

e. **(Special) Leave relating to specific events**: retention period of **2 calendar years** (amongst others to assess whether some of the annual thresholds were reached and for statistical purposes) **except if a deviating regime is specified below for indent 'a to d'**

> a. Maternity and adoptive leave: the birth or adoption documents would be retained in the personal file following the above-referred general retention rule for the personal file
> b. Leave for marriage: marriage certificate or other document containing the names of both parties in the marriage would be retained in the personal file in accordance with the general retention rule for the personal file
> c. Leave due to death: death certificate or other doc containing the name of the family member/relative will be kept in the personal file following the general retention rule for the personal file
> d. Leave due to birth or adoption of a child: Birth / adoption certificate will be kept in the personal file following the general retention rule for the personal file
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> e. Leave for change of residence of the member of staff:
> f. Leave for sickness of dependent child:
> g. Leave for sickness of family/relative:
> h. Leave for hospitalisation of dependent child Leave for travelling (linked to another form of special leave)
> i. Teleworking: Entries in ISIS
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> In general, anonymous and/or aggregated data may need to be kept for a longer periods.

13 A/ TIME LIMIT TO BLOCK/ERASE ON JUSTIFIED LEGITIMATE REQUEST FROM THE DATA SUBJECTS

Reference is made to the Decision of the ECB of 17 April 2007 adopting implementing rules concerning data protection at the ECB (ECB/2007/01).There is no time limit for the data subject to exercise his/her data subject's rights. Organisational safeguards are put in Article 9, including recourse to the DPO if the controller does not respect the time limits referred to under Article 9(b) to (c).

In case where ISIS does not allow the blocking of selective data at the request of the data subject, a snap shot picture of the challenged data will be taken and three copies will be made available to the following persons: the data subject, the controller and the DPO. In addition, in ISIS it will be made clear that a procedure aiming at blocking the relevant data has been initiated.

14/ 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.

Not applicable.

Although there is no information collected exclusively for statistical purposes, aggregated statistics are produced using existing information.

15/ PROPOSED TRANSFERS OF DATA TO THIRD COUNTRIES OR INTERNATIONAL ORGANISATIONS

Not applicable.

16/ THE PROCESSING OPERATION PRESENTS SPECIFIC RISK WHICH JUSTIFIES PRIOR CHECKING *(Please describe):*

The processing of data on leave may imply the processing of data relating to health (e.g. medical cleave, maternity leave and some other types of special leave) and are therefore covered by Article 27.2(a) of the Data Protection Regulation.

Furthermore, the procession of leave data may be covered by Article 27.2(b) and (d) of the Data Protection Regulation which address processing operations to assess the conduct of the official or for the purpose of excluding individuals from a right, benefit or contract.

17/ COMMENTS

PLACE AND DATE:

DATA PROTECTION OFFICER:

INSTITUTION OR BODY:

0989/2013-0413