

(To be filled out in the EDPS' office)

NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 06/01/2015

CASE NUMBER: 2015-0016

INSTITUTION: EUROPEAN CENTRAL BANK

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

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

European Central Bank
Sonnemannstrasse 20
60314 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 (DG/H) Human Resources Policies & Staff Relations Division (PSR Division)

3/ NAME OF THE PROCESSING

Handling of personal data during the different stages of the Single Supervisory Mechanism (SSM) performance feedback process.

4/ PURPOSE OR PURPOSES OF THE PROCESSING

The ECB is in charge of carrying out the supervisory tasks conferred on it in the context of the SSM. The establishment of Joint Supervisory Teams (JSTs) and the appointment of On-site Inspection Teams (OITs) by the ECB in the context of the Single Supervisory Mechanism necessitates an SSM performance feedback aimed at providing feedback on the performance of members of those JSTs and OITs by the person who steers and oversees the work of the staff members. The SSM performance feedback is also intended to motivate the members of these teams working in a matrix structure to achieve high-level performance in the interest of the SSM and may serve as an input into

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

local appraisal systems.

The JSTs and the OITs set up by the ECB in accordance with the SSM statutory framework are composed of staff from the ECB and from the National Competent Authorities (NCAs).³

More information about the functioning of the SSM is available in **Annex 2**.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

The personal scope of application of the SSM performance feedback comprises all staff members from ECB (as defined in Article 1 of respectively the Conditions of Employment for Staff of the ECB, Conditions of Short-Term Employment for Staff of the European Central Bank and the Conditions of the Graduate Programme of the European Central Bank) and NCAs working in JSTs for at least 25-30% of their total working time, or participating to on-site missions for longer than three months per feedback cycle. This includes also NCA Sub-Coordimators and Heads of Mission.

NCA staff members are individuals employed with the NCAs of the Member States participating in the SSM.

The SSM Framework Regulation outlines the SSM organisational set-up. Article 3 of the SSM Framework Regulation defines Joint Supervisory Teams as follows:

“A joint supervisory team shall be established for the supervision of each significant supervised entity or significant supervised group in participating Member States. Each joint supervisory team shall be composed of staff members from the ECB and from the NCAs appointed in accordance with Article 4 and working under the coordination of a designated ECB staff member (hereinafter the ‘JST coordinator’) and one or more NCA sub-coordinators, as further laid down in Article 6.”

Article 144 of the SSM Framework Regulation defines On-site Inspection Teams as follows:

‘1. The ECB shall be in charge of the establishment and the composition of on-site inspection teams with the involvement of NCAs, in accordance with Article 12 of the SSM Regulation.

2. The ECB shall designate the head of the on-site inspection team from among ECB and NCA staff members.

3. The ECB and NCAs shall consult with each other and agree on the use of NCA resources with regard to the on-site inspection teams.’

The SSM Regulation and the SSM Framework Regulation are attached as **Annex 6** and **Annex 7** to the ECB Cover Letter.

6/ DESCRIPTION OF THE DATA OR CATEGORIES OF DATA

(including, if applicable, special categories of data (Article 10) and/or origin of data)

The SSM performance feedback data is processed through the SSM Performance Feedback Form (**Annex 3**). The form is expressed in qualitative terms, through open text, on a limited set of technical and behavioural competencies, as well as on the performance concerning the tasks and objectives assigned in this context.

The main categories of data processed are the following:

³ Article 6 of the SSM Framework Regulation defines that JST Coordinators, assisted by NCA Sub-coordinators, shall ensure the coordination of the work within the JST. For that purpose, JST members shall follow the instructions of the JST Coordinator as regards their tasks in the JST. Article 12 of the SSM Regulation establishes the role of the ECB in supervising and coordinating on-site inspections.

- Main SSM tasks and objectives assigned to the person during the period of review;
- Feedback on the person's delivery of main SSM tasks and objectives assessing e.g. quantity, quality and timeliness;
- Feedback on competencies. The competencies applicable are (see also the description in **Annex 4**): *Professional knowledge; Communication; Cooperation and collaboration; Determination in achieving objectives; Judgement and intrusiveness; Breadth of awareness and being forward-looking; Acting objectively with integrity and independence; Managing SSM teams* (this competency is only assessed for those with a managerial role in a JST or OIT).
- Overall summary, including future focus where applicable and SSM competencies on which the person could focus her/his development where necessary.
- Comments by the respective member of the team (not mandatory to provide comments)

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

Data subjects will be informed through a Privacy Notice (**Annex 8**). The Privacy Notice is available through the following channels:

- SSM Performance Feedback Form (to be added as attachment);
- Intranet page (to be developed) of the ECB and the participating NCAs;
- SSM Performance Feedback Form Guidelines (to be developed and adopted in the future by the ECB relevant decision making body).

The team member whose performance is subject to the feedback process is requested to confirm that he/she took note of the feedback by ticking a box (and can provide comments as indicated above).

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

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

Decision of the European Central Bank of 17 April 2007 adopting implementing rules concerning data protection at the European Central Bank (ECB/2007/1) applies. Article 9 reads as follows:

"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."

In addition, the team member whose performance is subject to the performance feedback has the possibility to provide concluding comments upon closure of the feedback..

9/ AUTOMATED / MANUAL PROCESSING OPERATION

Data are processed by both automated and manual means; both with access rights on a strict need-to-know basis.

10/ STORAGE MEDIA OF DATA

All SSM Performance Feedback Forms shall be stored only in an IT application. This application is managed and administered by the ECB.

The IT application is still in the process of development and it is not yet in place.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

The legal basis of the processing operation is anchored in the legal framework of the SSM.

- (a) Article 6 of the SSM Regulation: this provision deals with the cooperation of the ECB in relation to the national competent authorities. In particular, Article 6(1), second sentence, of the SSM Regulation establishes the responsibility of the ECB for the effective and consistent functioning of the SSM. In order to comply with this responsibility, the ECB must be able to avail itself of means to ensure the effective functioning of the SSM by recourse to the regulatory instruments at its disposal.
- (b) For the JSTs: Article 3 and 4 of the SSM Framework Regulation are assigning to the ECB the responsibility for the establishment, composition and functioning of the JSTs.
- (c) For the OITs: Article 12 of the SSM Regulation and Article 143, 144 and 146 of the SSM Framework Regulation are allocating to the ECB the responsibility for the establishment, composition and functioning of the OITs.
- (d) SSM Performance Feedback Form Guidelines.⁴

The above provisions of the SSM Regulation and SSM Framework Regulation are to be read in conjunction with Recital 79 of the SSM Regulation as to the need to set up a feedback mechanism on the performance of the team members of the JSTs and OITs. The latter recital emphasises the necessity to establish a common supervisory culture in the SSM which is key for the success of the SSM and requires that those supervisory teams are able to draw on ‘highly motivated, well-trained and impartial staff which is indispensable to effective supervision’.

Recital (79) of the SSM Regulation reads as follows:

“Highly motivated, well-trained and impartial staff is indispensable to effective supervision. In order to create a truly integrated supervisory mechanism, appropriate exchange and secondment of staff with and among all national competent authorities and the ECB should be provided for. To ensure a peer control on an on-going basis, particularly in the supervision of large credit institutions, the ECB should be able to request that national supervisory teams involve also staff from competent

⁴ The SSM Performance Feedback Form Guidelines are still under development.

authorities of other participating Member States, making it possible to install supervisory teams of geographical diversity with specific expertise and profile. The exchange and secondment of staff should establish a common supervisory culture. On a regular basis the ECB should provide information on how many staff members from the national competent authorities are seconded to the ECB for the purposes of the SSM.”

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

The following recipients have access to all data in the form for the set retention period (see below):

- The person whose performance is being assessed (JST or OIT member) to their respective form;
- The person giving feedback on the performance (JST Coordinator, local NCA Sub-Coordinator, Head of the Centralised Onsite Inspections Division or someone on his/her behalf, and Head of Mission⁵) in their aforementioned capacities on a strict need-to-know basis. Upon replacement of the JST Coordinator, the local NCA Sub-Coordinator, and the Head of Mission, the incoming JST Coordinator, local NCA Sub-Coordinator, Head of the Centralised Onsite Inspections Division or someone on his/her behalf, and Head of Mission for this respective team;
- Designated staff members in charge of administering the feedback process at the ECB or NCAs on a strict need-to-know basis.
- The national relevant point of responsibility in the HR department of the team member's NCA which can be used as an input to the local appraisal system provided local laws allow for such use.
- For JST/OIT members which are ECB staff, their feedback forms will serve as an input for the ECB appraisal process which is foreseen in the adopted ECB appraisal guidelines. In such cases, the data will be available to those managing the performance of the ECB staff member concerned (e.g. line manager).

Detailed workflows outlining the SSM performance feedback are available in **Annex 5**.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

The data of the feedback is stored for a maximum of five years, commencing on the date of their completion. If the feedback is used as input into ECB or local appraisal system, the retention period foreseen for that appraisal process applies.

The Supervisory Manual foresees that JST members are appointed for a period of 3 to 5 years, during which feedback on their performance should be available to JST Coordinators, local NCA Sub-Coordinators and administrators to manage performance of “*highly motivated, well-trained and impartial staff*”.

13 A/ TIME LIMIT TO BLOCK/ERASE ON JUSTIFIED LEGITIMATE REQUEST FROM THE DATA SUBJECTS (Please, specify the time limits for every category, if applicable)

No specific time limits apply to the blocking or erasure of data on justified legitimate requests from the data subjects.

⁵ The Head of Mission is the person who is in charge of a particular on-site inspection (i.e. mission).

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14/ HISTORICAL, STATISTICAL OR SCIENTIFIC PURPOSES <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>
Further processing for historical, statistical or scientific purposes is not envisaged at this stage. Should the retention of data be decided at a later stage in order to gain statistical figures on the SSM performance feedback, the data will be anonymised.

15/ PROPOSED TRANSFERS OF DATA TO THIRD COUNTRIES OR INTERNATIONAL ORGANISATIONS
Not applicable.

16/ THE PROCESSING OPERATION PRESENTS SPECIFIC RISK WHICH JUSTIFIES PRIOR CHECKING <i>(Please describe)</i>
AS FORESEEN IN: <input type="checkbox"/> Article 27.2.(a) <i>(Processing of data relating to health and to suspected offences, offences, criminal convictions or security measures,)</i> <input checked="" type="checkbox"/> Article 27.2.(b) <i>(Processing operations intended to evaluate personal aspects relating to the data subject,)</i> <input type="checkbox"/> Article 27.2.(c) <i>(Processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes,)</i> <input type="checkbox"/> Article 27.2.(d) <i>(Processing operations for the purpose of excluding individuals from a right, benefit or contract)</i> <input type="checkbox"/> Other (general concept in Article 27.1)

The following documents are attached to this prior checking notification:

- **Annex 2:** Background Note on the SSM Performance Feedback
- **Annex 3:** SSM Performance Feedback Form
- **Annex 4:** SSM Performance Feedback Form – description of SSM competencies
- **Annex 5:** SSM Performance Feedback Form – process workflows
- **Annex 6:** Council Regulation (EU) No 1024/2013 of 15 October 2013 (SSM Regulation)
- **Annex 7:** Regulation (EU) no. 468/2014 of the ECB of 16 April 2014 (SSM Framework Regulation)
- **Annex 8:** Privacy Notice

PLACE AND DATE: FRANKFURT, 6 JANUARY 2015

DATA PROTECTION OFFICER: FREDERIK MALFRÈRE

INSTITUTION OR BODY: EUROPEAN CENTRAL BANK