

(To be filled out in the EDPS' office)

NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 31-03-2017

CASE NUMBER: 2017-0358

INSTITUTION: EUROPEAN CENTRAL BANK

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

INFORMATION TO BE GIVEN

1/ NAME AND ADDRESS OF THE CONTROLLER

European Central Bank
60640 Frankfurt am Main

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

All divisions in the Directorate General Micro-Prudential Supervision I and II (hereinafter '**DGMS I/II**');
Both sections in the Directorate Secretariat to the Supervisory Board (hereinafter '**DSSB**')

3/ NAME OF THE PROCESSING

3.1 Assessment by the ECB of applications or notifications of significant institutions supervised by the ECB to grant credits to senior officials or other related parties of this institution ('**Credits to senior officials**').

3.2 Assessment by the ECB of credit institutions' remuneration paid to staff members, e.g. in the context of credit institutions' applications based on Articles 92-96 of the CRD IV and national laws implementing the CRD IV or in the context of ongoing supervision ('**Remuneration assessments**').

¹ OJ L 8, 12.01.2001.

4/ PURPOSE OR PURPOSES OF THE PROCESSING

4.1 **Credits to senior officials:** The prudential supervisory purpose is to ensure the sound and prudent management of the significant supervised entities. In order to avoid conflicts of interest and abuses related to transactions with senior officials, some national laws (e.g. in Spain) require the prior approval by the competent authority of any credit exceeding specific threshold. In other Members States the competent authority may impose upper limits on credit institutions for the granting of loans to senior officials or grant on a case-by-case basis exceptions from such limits. In other cases, national law stipulates that competent authorities may request the reduction of loans exceeding specific limits.

4.2 **Remuneration assessments:** The prudential supervisory purpose is to ensure the sound and prudent management of the significant supervised entities. In order to ensure that remuneration policies applied by supervised entities are consistent with sound and effective risk management and do not encourage excessive risk-taking, the applicable legal framework in some cases requires approval by the competent authority. In particular, approval of the ECB is required e.g. for the exclusion of certain staff members from the perimeter of material risk takers, according to Article 4(5) of Commission Delegated Regulation 604/2014. Also, the approval of the ECB is required for the accrual of variable remuneration in institutions which have received public aid, according to Article 93 of Directive 2013/36/EU, and for the granting of certain forms of remuneration (e.g. retention bonuses), according to Article 94 of Directive 2013/36/EU as transposed in certain national laws. The ECB also assesses the soundness of credit institution's remuneration systems in the context of its ongoing supervision.

In all these procedures, personal data of the individuals receiving the remuneration might be involved.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

5.1 **Credits to senior officials:** Members of the management bodies and senior managers of significant supervised entities, as well as their relatives up to a certain degree, and related parties such as shareholders, depending on national law.

5.2 **Remuneration assessments:** Staff members of significant supervised entities.

6/ DESCRIPTION OF THE DATA OR CATEGORIES OF DATA (*including, if applicable, special categories of data (Article 10) and/or origin of data*).

6.1 **Credits to senior officials:** Personal data required under national law, in particular name of the senior official requesting the credit, terms and conditions of the credit, and possibly information regarding the financial situation of the senior official as well as whether and which collateral has been provided. No special categories of data in the sense of Article 10 of Regulation 45/2001 are processed.

6.2 **Remuneration assessments:** Personal data required by CRD IV and Commission Delegated Regulation 604/2014, in particular the name of the staff member and the amount of his/her

remuneration, potentially split between fixed and variable remuneration. No special categories of data in the sense of Article 10 of Regulation 45/2001 are processed.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

7.1 Credits to senior officials: The personal data is submitted to the ECB by the significant supervised credit institution. The ECB will ensure that the credit institutions inform the data subjects on the processing of their personal data as required by Article 12 of Regulation 45/2001 (see Annex V).

7.2 Remuneration assessments: The personal data is submitted to the ECB by the significant supervised credit institution. The ECB will ensure that the credit institutions inform the data subjects on the processing of their personal data, as required by Article 12 of Regulation 45/2001 (see Annex V).

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

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

Article 9 of the ECB Decision of 17 April 2007 adopting implementing rules concerning data protection at the ECB (ECB/2007/1) applies:

“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”.

Data subjects may also exercise their rights to rectify, block or object to personal data concerning them whenever they are granted the **right to be heard** in the mentioned supervisory procedures pursuant to Article 22(1) of the 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 (further ‘SSM Regulation’) and Articles 31, 77, 82(3) and 87 of the Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central

Bank and national competent authorities and with national designated authorities (further ‘SSM Framework Regulation’), as applicable.

According to the Decision of the European Central Bank of 14 April 2014 concerning the establishment of an **Administrative Board of Review** and its operating rules (further ‘Decision ECB/2014/1614’) any natural person to whom a decision of the ECB under the SSM Regulation is addressed, or to whom such decision is of direct and individual concern, may request an internal administrative review to the Administrative Board of Review. The Administrative Board of Review may call for an oral hearing if it considers it necessary for the fair evaluation of the review (Article 14 of Decision ECB/2014/16). The ECB is to attend the hearing and the data subjects may at that stage also exercise their right to rectify, block or object to personal data concerning them.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

The personal data is entered manually by the JSTs (DG MS I or II) into the relevant template which is then stored in the ECB’s electronic documents and records management system (‘DARWIN’). The ECB also uploads to the template, as an attachment, the whole application/notification as received from the significant supervised entity. The personal data is used by the ECB to carry out the assessments required by the mentioned procedures.

10/ STORAGE MEDIA OF DATA

The documents containing personal data to be processed within the mentioned supervisory procedures (credits to senior officials, remuneration assessments) will be stored in DARWIN.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

Legal basis:

11.1 Credits to senior officials: Articles 127(6) TFEU, 4(1)(e), 4(3) and 9(1) SSM Regulation, provisions of national law (see Annex IV). In its meeting on 3 March 2016, the Supervisory Board has clarified that the ECB is directly competent for assessing credits to senior officials, taking over the competence from national competent authorities (See Annexes II and III).

11.2 Remuneration assessments: Articles 127(6) TFEU, 4(1)(e), 9(1) SSM Regulation, provisions of national law.

Lawfulness:

Article 5(a) of Regulation (EC) No 45/2001: the processing of personal data in the supervisory procedures mentioned above is necessary for the performance of the tasks carried out in the public interest on the basis of the Treaties establishing the European Communities (Articles 127(6) TFEU) and of other legal instruments adopted on the basis thereof (in particular Article 4 SSM Regulation).

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

In all the mentioned procedures the personal data may be disclosed, on a need-to-know basis, to the NCAs' staff (horizontal functions), the JSTs' staff (DGMS I or II, NCAs), DGMS IV staff, staff in the ~~Secretariat to the Supervisory Board~~ DSSB, DGSE staff, and the members of the Supervisory Board and of the Governing Council of the ECB (including the staff supporting them in the review of the documentation).

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

The purpose of the processing of personal data in the herein mentioned procedures is to ensure the sound and prudent management of the supervised entities (prudential supervisory purposes).

The ECB considers storing the personal data in question for **15 years** following the date of the decision. In case of initiated administrative or judicial proceedings, the retention period shall be extended and end 1 year after these proceedings are sanctioned by a decision having acquired the authority of a final decision.

This initial retention policy is subject to review within the next five years in accordance with the experience made.

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

See reply in section 8.

(Please, specify the time limits for every category, if applicable)

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.

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 referred procedures, the data will be anonymised.

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

Pursuant to Article 8 of the SSM Regulation in relation to tasks conferred by it, the ECB may develop contacts and enter into administrative arrangements with supervisory authorities, international organisations and the administrations of third countries, subject to appropriate coordination with the EBA. The EDPS shall be informed on those administrative arrangements before adoption, in accordance with Article 28(1) of Regulation (EC) No 45/2001.

Moreover, Article 152 of the SSM Framework Regulation provides for the continuity of existing cooperation arrangements with other authorities entered into by an NCA prior to 4 November 2014 that cover at least in part the tasks conferred to the ECB by the SSM Regulation.

Article 55 of CRD IV regarding “cooperation agreements” provides that “*Member States and EBA, in accordance with Article 33 of Regulation (EU) No 1093/2010, may conclude cooperation agreements, providing exchange of information, with the supervisory authorities of third countries or with authorities or bodies of third countries in accordance with Article 56 and 57(1) of this Directive only if the information disclosed is subject to a guarantee that professional secrecy requirements at least equivalent to those referred to in Article 53(1) of this Directive are complied with. Such exchange of information shall be for the purpose of performing the supervisory tasks of those authorities or bodies.*”

Therefore, any transfer of personal data by ECB to third countries shall only take place provided that (1) there are cooperation arrangements set with those countries, (2) the data disclosed is subject to a guarantee of applicable professional secrecy requirements at least equivalent to EU level and (3) shall be used solely for the purpose of performing the supervisory tasks by the recipient.

The ECB will ensure compliance with the provisions of Article 9 of the Regulation 45/2001, and will not transfer personal data to third countries or international organisations not subject to Directive 95/46/EC if an adequate level of protection of personal data is not ensured in the country of the recipient or within the recipient international organisation, without prejudice to the derogations as provided for in Article 9(6).

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

AS FORESEEN IN:

↑ Article 27.2.(d)

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

16.1.D. Credit to senior officials: If the proposed credit to a senior official is not in line with the applicable legal framework, national law in some cases empowers the competent authority to reject the request or to approve it with conditions. In consequence, the supervised entity is not allowed to grant the credit to the senior official as requested, and the senior official is not allowed to receive the requested credit.

16.2.D. Remuneration assessment: If the proposed exemption from the perimeter of material risk takers is rejected by the ECB because it is not in line with the applicable legal framework, the individual is deemed to be a material risk taker. In consequence, his remuneration is subject to special provisions of the CRD IV. In particular, the amount of its variable remuneration is in principle limited to a maximum of 100% of the fixed component. If the ECB rejects the accrual of variable remuneration, the staff member is not entitled to receive this variable remuneration, which excludes him from certain rights included in his employment contract. Also the assessment of the remuneration systems in the context of ongoing supervision might lead to an ECB decision which impacts the accrual or payment of certain forms of remuneration.

17/ COMMENTS

We herein attach the following documents:

Appendix I: Letter to the Supervisory Board on the Task Force on National Powers

Appendix II: Extract from the minutes of the Supervisory Board March 2016 – Decision on the Outcome of the Task Force on National Powers

Appendix III: Summary of legal basis in national legislations

Appendix IV: Template letter sent to supervised entities

PLACE AND DATE:

DATA PROTECTION OFFICER:

INSTITUTION OR BODY:

(To be filled out in the EDPS' office)

EDPS OPINION

OF DATE:

CASE NUMBER:

(To be filled out in the EDPS' office)

FOLLOW UP *(in case of acting measures to be taken)*