



EUROPEAN CENTRAL BANK

SEC/GenC/04/1/08
THE PRESIDENT

5 March 2004

PUBLIC ACCESS TO ECB DOCUMENTS

1. New ECB legal framework for public access to ECB documents

In order to ensure that the ECB legal framework reflects the openness principle and respects similar objectives and standards as the other EU institutions and bodies, the Governing Council at its meeting on 4 March 2004 (SEC/GenC/04/1/08a) adopted a new ECB Decision on public access (ECB/2004/3). The recently revised Rules of Procedure of the ECB (ECB/2004/2) form its legal basis.

The new elements included in the Decision ECB/2004/3 can be summarised as follows:

Wider definition of documents

The ECB Decision ECB/2004/3 grants access to:

- 'any content whatever its medium', thereby also reflecting developments in information technology;
- documents relating to the 'policies, activities and decisions falling within the institution's sphere of responsibility', i.e. beyond the current definition of 'administrative' documents because the ECJ treats all documents in the same manner, regardless of how they are called or defined;
- documents in the possession of the ECB, i.e. drawn up by the ECB or received by the ECB from third parties.

Stronger exceptions

The wider definition of documents is counter-balanced by a stricter protection of sensitive information.

Exceptions relate to:

- protection of public interest (including monetary and economic policy, as well as additional sensitive issues);
- preservation of the ECB's and NCBs' independence, the effectiveness of the ECB decision-making process, and protection of ECB internal consultations and deliberations including the integrity/confidentiality of ECB decision-making bodies proceedings;
- protection of the confidentiality of certain documents deemed of a highly sensitive nature and classified as such;
- protection of private interest (e.g. personal data).

Co-operation with third parties, including NCBs

The new Decision ensures that documents from third parties' in the ECB's possession are handled with respect to the authorship rule. Conversely, ECB rules should be respected when third parties handle ECB documents in their possession. Third parties would be consulted before the disclosure of their documents in the ECB's possession unless it is clear that documents shall or shall not be disclosed. NCBs are invited

to consult, or refer to, the ECB whenever they receive requests for ECB or ESCB-related documents in their possession.

Beneficiaries

Decision ECB/1998/12 granted access to ECB documents to ‘the public’ in general. The new Decision makes a formal distinction between, on the one hand, *EU citizens and any natural or legal person residing or having its registered office in a Member State* which have a right of access to documents and, on the other hand, any other applicant of whom the ECB may consider the applications. This distinction mirrors the one made in Regulation 1049/2001 (EC).

Other issues of relevance

The two-stage internal administrative procedure to process applications foreseen in Decision ECB/1998/12 remains unchanged. It should be noted, however, that the internal administrative procedure has been enhanced in line with EU standards in the European Code of Good Administrative Behaviour. Moreover, contrary to the new EU practice developed throughout Community Institutions and bodies in implementation of Regulation 1049/2001 (EC), no direct public access to documents via an on-line public register is foreseen.

The Decision has been discussed and supported by LEGCO in extended composition.

2. Need for harmonised application of the new ECB legal framework

As mentioned above, the new ECB Decision under Article 5 foresees the co-operation with NCBs on the disclosure of ECB documents in the possession:

“Documents that are in the possession of an NCB and have been drawn up by the ECB as well as documents originating from the EMI or the Committee of Governors may be disclosed by the NCB only subject to prior consultation of the ECB concerning the scope of access, unless it is clear that the document shall or shall not be disclosed.

Alternatively the NCB may refer the request to the ECB.”

In order to ensure a uniform ESCB-wide application of the new public access legal framework, the endorsement of its applicability to non-euro area NCBs by the relevant Governors is required.

The co-operation procedure of Article 5 has been complemented by a Governing Council agreement (in line with the practice followed by other EU institutions) that a time limit of 5 working days will be applied for consultations between the ECB and NCBs and that such consultations shall be in writing.

3. Classification of ECB documents

According to the current Article 8.2 of the Rules of Procedure of the General Council of the ECB:

“All documents drawn up by the General Council, and by any committee or group dealing with matters falling within its competence, shall be confidential unless the General Council decides otherwise. Such documents shall form an integral part of the documentation in the ECB archives and shall be accessible according to the same criteria as shall be specified by the Governing Council for access to the ECB archives.”

The wording of this Article mirrored the one of Article 23.2 of the Rules of Procedure of the ECB before its revision. A review of the Rules of Procedure of the General Council will be undertaken to align the wording, so as to ensure that the classification regime for General Council documents (which form an integral part of the ECB documents) will be treated in a consistent manner.

Article 23.3 of the ECB Rules of Procedure, as revised, provides for the classification of ECB documents in accordance with the rules laid down in an Administrative Circular of the ECB. This Administrative Circular is currently under review and is expected to be finalised by end April 2004.

The General Council is invited to:

- (a) take note of the recently adopted Decision *on public access to ECB documents (ECB/2004/3) (SEC/GenC/04/1/08a)*;**
- (b) request the non-euro area NCB Governors to endorse the applicability of the aforementioned Decision to their respective NCBs with regard to its Article 5 and to agree that a time limit of 5 working days will be applied for consultations between the ECB and their respective NCBs.**