



EUROPEAN CENTRAL BANK

EUROSYSTEM

Annex 3 to LS/PvdH/09/21

EXCERPTS OF DOCUMENT SEC/EB/08/599/22

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To: The Executive Board

Date: 23 September 2008

Subject: **REVIEW OF PROCEDURE FOR GRANTING ACCESS TO HR POLICY /
EMPLOYMENT RELATED DOCUMENTATION AND DECISIONS**

1. Introduction

In 2006 the Executive Board decided on a policy on access to employment related documentation and decisions (SEC/EB/06/37/34).¹ The recent assessment of requests² from staff members to employment related documentation revealed the need for clarifying and adjusting the internal procedure in respect of (i) the manner in which the relevant Executive Board decision and reasoning is conveyed to the applicant and (ii) the procedural steps to be followed in the assessment of such requests. Accordingly, DG/H, DG/L and DG/SL have agreed on some clarifications/adjustments which are outlined in Section 2 of this memo. Particular emphasis is paid to safeguarding the confidentiality of the Executive Board summary proceedings while addressing the applicant's interests in obtaining the relevant information. In line with the principles of good administration and transparency it is suggested that staff members are informed about this access regime via the monthly communication of Executive Board decisions.

The Executive Board is invited to approve:

- (a) the proposed approach to convey relevant decisions efficiently and in a legally sound manner while safeguarding the confidentiality of the Executive Board summary proceedings;**
- (b) the proposed internal procedure as regards the assessment of requests from individual staff members on issues related to staff members' personal employment relation with the ECB and from the Staff Committee/recognised trade unions for access to Executive Board decisions on general HR policies, including in particular the clarification that, in case of non-applicability of the public access regime, the Director General HR Budget and Organisation is competent to decide whether or not to grant access to employment related decisions/documents.**

¹ It is recalled that the access right to Executive Board Decisions on general ECB HR policies or issues directly related to the employment relation of staff members is not covered by the ratio legis of either the *Decision on public access to ECB documents (ECB/2004/3)* or the *Administrative Circular 07/2004 on the management and confidentiality of ECB documents* (The former concerns the access right of the general public to ECB documents and the latter concerns the access rights of staff members as far as his/her assigned tasks or his/her professional knowledge and skills are concerned. See also documents SEC/EB/06/37/34 and SEC/EB/05/26/18). In order to address relevant requests by staff members/the Staff Committee, the Executive Board decided on 1 August 2006 "to delegate to the Executive Board member in charge of DG-H the authority to finalise the letter informing the Staff Committee or the staff member concerned about the Executive Board's decision"). However, implementation has not consistently followed.

² Some of these requests have been submitted in context of the internal appeal procedure.

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2. **Granting access to documentation/decisions of the Executive Board on issues directly related to the employment relation of staff members with the ECB – procedural clarifications/adjustments**

A number of applications for access to employment related Executive Board decisions and the underlying documentation were made (since 2003) by staff members, the Staff Committee as well as by lawyers (on behalf of their clients, in the context of internal appeal procedures) making explicit reference to the public access regime. Some of these applications requested information on the reasoning of Executive Board decisions (which was contained only in the background documentation and is not recorded in the Executive Board summary proceedings). In order to ensure “good administration”, to best prepare for future access requests to Executive Board decisions and underlying documentation on employment related issues, to establish a consistent and standardised implementation and, last but not least, to streamline the process in the future, DG/H, DG/L and DG/SL propose the following procedural adjustments to the current access regime:

2.1 **“Draft Executive Board Decision”**

Whenever employment related issues are submitted to the Executive Board for a final decision, the documentation will henceforth also include an additional note, entitled “Draft Executive Board Decision” (a recent example is enclosed in the Annex) to be prepared by the relevant business area outlining both the decision to be taken and its reasoning. This note (the template of which DG/H and DG/SL have established together with DG/L) will be approved by the Executive Board member as part of the documentation to be submitted under the respective agenda item. The Secretary would incorporate in the note the final decision taken by the Executive Board as recorded in its summary proceedings (his signature would certify its “authenticity”) and would make it available to DG/H for transmission/follow-up, as applicable. It should be clarified that:

- (a) a similar procedure has already been implemented since July 2008, in agreement between DG/L, DG/SL and DG/H, in all cases of individual appointments by the Executive Board (e.g. following a formal recruitment campaign, as well as following a direct appointment by the Executive Board or in the context of management mobility or organisational restructuring) to ensure that the Board’s Decision on the individual appointment is in all cases available in a legally satisfactory manner;
- (b) an “Executive Board Decision” would only be prepared when the Executive Board takes the final decision, i.e. not when the Executive Board approves “in principle” an HR policy and the launch of a Staff Committee/recognised trade union consultation;
- (c) the final “Executive Board Decision” would be transmitted by DG/H automatically to the Staff Committee / recognised trade union for topics on which a consultation procedure has taken place. For other topics such Decisions will be provided by DG/H to (i) the Staff Committee/recognised trade union only upon request and in case they need to have access to the documentation/decision; and (ii) individually affected staff member(s) only upon request and in case the decision individually affects their employment relation with the ECB.

2.2 **Assessment of requests for access – internal procedural steps**

DG/H, DG/L and DG/SL have also clarified the procedural steps to be followed in cases of requests for access by other applicants (for example in case of appointments, requests from the staff members not selected or from the Staff Committee) for access to such Executive Board Decisions. These include:

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- the need for a formal assessment³ of the applicability of the public access regime by the Director General SL. Such assessment will in future take place for any such request submitted to DG/H (also in the context of internal appeal procedures);
- the clarification that, in case of non-applicability of the public access regime, the Director General HR Budget and Organisation is competent to decide whether or not to grant access to employment related decisions/documents;
- the clarification that, in case the applicants would invite the ECB to revisit/review its decision for disclosure of the requested documentation (“confirmatory application”), the review would be submitted for consideration to the Executive Board (e.g. in analogy application of the regime provided in the ECB Decision on public access (ECB/2004/3)).

[...]

2.3 Communication

It is suggested to inform the staff, via the monthly communication of Executive Board decisions, that, in case of non-applicability of the public access regime, the Director General HR Budget and Organisation is competent to decide whether or not to grant access to employment related decisions/documents as well as on the possibilities to request a “review” of this decision (“confirmatory application”).

³ The need for such formal record is based on the following considerations: (1) ECB Decision ECB/2004/3 establishes the framework on the basis of which all requests for access to documents have to be assessed including those requests from staff members and/or member of the Staff Committee/recognised trade union as it cannot be excluded, a priori, that specific elements of those requests would qualify as public access requests. (2) According to Article 7(1) of ECB Decision ECB/2004/3, it is the Director General Secretariat and Language Services to decide whether or not to grant access to the requested document under the public access regime. It is only on the basis of the decision of the Director General Secretariat and Language Services not to grant access to the requested document under ECB Decision ECB/2004/3 that the ECB, as far as access requests from staff members and/or member of the Staff Committee/recognised trade union are concerned, has to explore whether there are any other reasons (see below) which could justify granting access to the requested document. These other reasons are as follows: (i) decisions which individually affect each staff members employment relation with the ECB, since according to general principles of Community law each staff member has the right of access to those decisions in the case of legitimate interest; and (ii) general ECB HR policies, since the principle of good administration but also the EU Charter of Fundamental Social Rights of Workers, the EU Charter of Fundamental Rights and various EU employment law Directives imply that the Staff Committee/recognised trade union should have automatic access to ECB decisions on the outcome of consultation procedures as regards general ECB employment.