



EUROPEAN CENTRAL BANK

[DRAFT] 24 February 2004

SEC/GovC/04/5/11b.an

DECISION OF THE EUROPEAN CENTRAL BANK

of [date Month YYYY]

on public access to European Central Bank documents

[(ECB/YYYY/XX)]

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular to Article 12.3 thereof,

Having regard to the Rules of Procedure of the European Central Bank ~~as amended on 22 April 1999~~¹, and in particular to Article 23 thereof,

Whereas:

- (1) The second subparagraph of Article 1 of the Treaty on European Union enshrines the concept of openness, stating that the Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen. Openness enhances the administration's legitimacy, effectiveness and accountability, thus strengthening the principles of democracy.
- (2) In the Joint Declaration² relating to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents³, the European Parliament, the Council and the Commission call on the other institutions and bodies of the Union to adopt internal rules on public access to documents which take account of the principles and limits set out in the Regulation. The regime on public access to ECB documents as laid down in Decision ECB/1998/12 of 3 November 1998 concerning public access to documentation and the archives of the European Central Bank⁴ should be revised accordingly.

¹ OJ L 125, 15.5.1999, p. 34, ~~as amended on 7 October 1999~~, OJ L 314, 8.12.1999, p. 32, 19.5.1999, p. 34. As last amended on 19 February 2004, OJ L XXX, X.XX.XXXX, p. XX.

² OJ L 173, 27.6.2001, p. 5.

³ OJ L 145, 31.5.2001, p. 43.

⁴ OJ L 110, 28.4.1999, p. 30.

- (3) Wider access should be granted to ECB documents, while at the same time protecting the independence of the ECB and of the national central banks (NCBs) foreseen by Article 108 of the Treaty, and Article 7 of the Statute, and the confidentiality of certain matters specific to the performance of the ECB's tasks. In order to safeguard the effectiveness of its decision-making process, including its internal consultations and preparations, the proceedings of the meetings of the ECB's decision-making bodies are confidential, unless the relevant body decides to make the outcome of its deliberations public.
- (4) However, certain public and private interests should be protected by way of exceptions. Furthermore, the ECB needs to protect the integrity of euro banknotes as a means of payment including, without limitation, the security features against counterfeiting, the technical production specifications, the physical security of stocks and the transportation of euro banknotes.
- (5) When NCBs handle requests for ECB documents that are in their possession, they should consult the ECB in order to ensure the full application of this Decision unless it is clear whether or not the document may be disclosed.
- (6) In order to bring about greater openness, the ECB should grant access not only to documents drawn up by it, but also to documents received by it while at the same time preserving the right for the third parties concerned to express their positions with regard to access to documents originating from those parties.
- (7) In order to ensure that good administrative practice is respected, the ECB should apply a two-stage procedure,

HAS DECIDED AS FOLLOWS:

Article 1

Purpose

The purpose of this Decision is to define the conditions and limits according to which the ECB may shall give public access to ECB documents and to promote good administrative practice on public access to such documents.

Article 2

Beneficiaries and scope

1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to ECB documents, subject to the conditions and limits defined in this Decision.

2. The ECB may, subject to the same conditions and limits, grant access to ECB documents to any natural or legal person not residing or not having its registered office in a Member State.
3. This Decision shall be without prejudice to rights of public access to ECB documents which might follow from instruments of international law or acts which implement them.

Article 3

Definitions

For the purpose of this Decision:

- (a) ~~'document(s)' and 'ECB document(s)'~~ 'document' and 'ECB document' shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) drawn up or held by the ECB and relating to its policies, activities or decisions, as well as documents originating from the European Monetary Institute (EMI) and from the Committee of Governors of the central banks of the Member States of the European Economic Community (Committee of Governors);
- (b) 'third party' shall mean any natural or legal person, or any entity outside the ECB.

Article 4

Exceptions

1. The ECB shall refuse access to a document where disclosure would undermine the protection of:
 - (a) the public interest as regards:
 - the confidentiality of the proceedings of the ECB's decision-making bodies,
 - the financial, monetary or economic policy of the Community or a Member State,
 - the internal finances of the ECB or of the NCBs,
 - protecting the integrity of euro banknotes,
 - public security,
 - international financial, monetary or economic relations;
 - (b) the privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data;
 - (c) the confidentiality of information that is protected as such under Community law.

2. The ECB shall refuse access to a document where disclosure would undermine the protection of:
 - The commercial interests of a natural or legal person, including intellectual property,
 - court proceedings and legal advice,
 - the purpose of inspections, investigations and audits,unless there is an overriding public interest in disclosure.
3. Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the ECB or with NCBs shall be refused even after the decision has been taken, unless there is an overriding public interest in disclosure.
4. As regards third-party documents, the ECB shall consult the third party concerned with a view to assessing whether an exception in this Article is applicable, unless it is clear that the document shall or shall not be disclosed.
5. If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released.
6. The exceptions as laid down in this Article shall only apply for the period during which protection is justified on the basis of the content of the document. The exceptions may apply for a maximum period of 30 years unless specifically provided otherwise by the ECB's Governing Council. In the case of documents covered by the exceptions relating to privacy or commercial interests, the exceptions may continue to apply after this period.

Article 5

Documents at the NCBs

~~ECB documents~~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.

Article 6

Applications

1. An application for access to a document shall be made to the ECB⁵ in any written form, including electronic form, in one of the official languages of the Union and in a sufficiently precise manner

⁵ Addressed to the European Central Bank, Secretariat Division, Kaiserstrasse 29, D-60311 Frankfurt am Main. Fax: + 49 (69) 1344 6170. E-mail: ecb.secretariat@ecb.int.

to enable the ECB to identify the document. The applicant is not obliged to state the reasons for the application.

2. If an application is not sufficiently precise, the ECB shall ask the applicant to clarify the application and shall assist the applicant in doing so.
3. In the event of an application relating to a very long document or to a very large number of documents, the ECB may confer with the applicant informally, with a view to finding a fair solution.

Article 7

Processing of initial applications

1. An application for access to a document shall be handled promptly. An acknowledgement of receipt shall be sent to the applicant. Within 20 working days from the receipt of the application, or on receipt of the clarifications requested in accordance with Article 6(2), the Director General Secretariat and Language Services of the ECB shall either grant access to the document requested and provide access in accordance with Article 9 or, in a written reply, state the reasons for total or partial refusal and inform the applicant of their right to make a confirmatory application in accordance with paragraph 2.
2. In the event of total or partial refusal, the applicant may, within 20 working days of receiving the ECB's reply, make a confirmatory application asking the ECB's Executive Board to reconsider its position. Furthermore, failure by the ECB to reply within the prescribed 20 working days' time limit for handling the initial application shall entitle the applicant to make a confirmatory application.
3. In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, or if the consultation of a third party is required, the ECB may extend the time limit provided for in paragraph 1 by 20 working days, provided that the applicant is notified in advance and that detailed reasons are given.
4. Paragraph 1 shall not apply in case of excessive ~~and~~ or unreasonable applications, in particular when they are of a repetitive nature.

Article 8

Processing of confirmatory applications

1. A confirmatory application shall be handled promptly. Within 20 working days from the receipt of such application, the Executive Board shall either ~~approve the application~~ grant access to the document requested and provide access in accordance with Article 9 or, in a written reply, state the reasons for the total or partial refusal. In the event of a total or partial refusal, the ECB shall inform

the applicant of the remedies open to ~~him~~/her/them in accordance with Articles 230 and 195 of the Treaty.

2. In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, the ECB may extend the time limit provided for in paragraph 1 by 20 working days, provided that the applicant is notified in advance and that detailed reasons are given.
3. Failure by the ECB to reply within the prescribed time limit shall be considered to be a negative reply and shall entitle the applicant to institute court proceedings and/or submit a complaint to the European Ombudsman, under Articles 230 and 195 of the Treaty, respectively.

Article 9

Access following an application

1. Applicants may consult documents to which the ECB has granted access either at its premises or by receiving a copy, including, where available, an electronic copy. The costs of producing and sending copies may be charged to the applicant. This charge shall not exceed the real cost of producing and sending the copies. Consultation on the spot, copies of less than 20 A4 pages and direct access in electronic form shall be free of charge.
2. If a document has already been released by the ECB and is easily accessible, the ECB may fulfil its obligation of granting access to it by informing the applicant how to obtain the requested document.
3. Documents shall be supplied in an existing version and format (including electronically or in an alternative format) as requested by the applicant.

Article 10

Reproduction of documents

1. Documents released in accordance with this Decision shall not be reproduced or exploited for commercial purposes without the ECB's prior specific authorisation. The ECB may withhold such authorisation without stating reasons.
2. This Decision shall be without prejudice to any existing rules on copyright which may limit a third party's right to reproduce or exploit released documents.

Article 11

Final provisions

This Decision shall enter into force on the day following its publication in the *Official Journal of the European Union*.

Decision ECB/1998/12 shall be repealed.

Done at Frankfurt am Main on [date Month YYYY].

The President of the ECB

Jean-Claude TRICHET