



EUROPEAN CENTRAL BANK

EUROSYSTEM

Jean-Claude TRICHET

President

Personal & confidential

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LS/JCT/09/146

03 February 2009

### **Public access request for ECB documents**

Dear [ ],

On 14 January the ECB received your confirmatory application for public access to (1) internal documents, works, minutes and information in relation to the designation of eligible candidates for an ad personam promotion in 2008, to the proposal of candidates for such a promotion at the level of each business area, of inter- business area, and of the Executive Board, and to designation of the candidates promoted; (2) all the different lists and cases of proposals of candidates for an ad personam promotion in 2008, established at the level of each business area, of inter- business area, and of the Executive Board, including in particular the detailed cases submitted by individual Area Heads to DG-H, the list of the final proposals agreed upon by the group of Area Heads, and the final decision of the Executive Board; (3) the list of award levels and notional awards in DG-P (in anonymous form) for 2005 and 2006.

I should like to inform you that the Executive Board has thoroughly considered your request as well as the assessment which has been made and the decisions which have been taken in response to your original application and hereby confirms the assessment and the decisions of the Director General Secretariat and Language Services (DG/SL) (laid down in his letter of 17 December 2008) that:

- your request is dealt with as a public access request only as far as it concerns access to documents outlining/relating to the procedure and legal framework for ad personam promotions. It should be clarified that the reply of the DG/SL was based on a thorough assessment concluding that the procedure and the legal framework for ad personam promotions are issues on which the ECB acts in its capacity as legislator and administrator of public affairs which could be deemed as having a direct bearing on citizens in general (i.e. being an issue of general interest);
- your requests for access to all other documents indicated in points (1) – (3) above cannot be regarded as governed by the legal framework applicable to public access requests in line with ECB Decision ECB/2004/3, since this Decision governs the access of the public to ECB documents and has been adopted to enhance the administration's legitimacy, effectiveness and accountability towards the citizens.

These documents could not be deemed as having a direct bearing on the citizens in general, but rather as being of a specific interest to your client(s) since they relate to the employment relationship between the staff member(s) and the ECB.

I should like nevertheless to note that your arguments about the ECB's reply of these requests is being assessed by the Directorate General HR, Budget and Organisation and further information would be conveyed to you under a separate cover.

Moreover, on behalf of the Executive Board, I would like to note the following:

- the regime covering access to decisions which relate directly to the employment relationship between the staff member and the ECB or, as concerns the Staff Committee, to general ECB employment law topics provides for access to documents beyond the scope of the public access regime under Decision ECB/2004/3 and, as a result, is favourable towards your client(s);
- in case of non-applicability of the public access regime, the Director General HR Budget and Organisation has been allocated (by the Executive Board) with the competence to decide whether or not to grant access to employment related decisions / documents. This procedural approach and competence has been communicated to all ECB staff members (for convenience, an excerpt of the relevant communication is herewith enclosed);
- this procedural approach has been applied consistently by the ECB in previous requests for access submitted by you in 2008 (*please refer to the following correspondence addressed to you: Ref: LS/PvdH/08/20, dated 5 June 2008; Ref: LS/JCT/08/1167, dated 18 July 2008; Ref: LS/PvdH/08/22, 23 June 2008; Ref: LS/PvdH/08/23, 8 August 2008, Ref: LS/PvdH/08/25, dated 17 September 2008; Ref: LS/PvdH/09/04, dated 20 January 2009*).

Furthermore, I should like to draw your attention to the fact that in line with Article 10 of ECB Decision ECB/2004/3 "*documents released 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.*" Moreover, in line with Article 8.1 of the said ECB Decision ECB/2004/3 in the event of total or partial refusal, the applicant may have recourse to the remedies open to him/her in accordance with Articles 230 and 195 of the Treaty.

With kind regards,

Jean-Claude Trichet

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