

EUROPEAN CENTRAL BANK

DECISION OF THE EUROPEAN CENTRAL BANK

of 3 November 1998

concerning public access to documentation and the archives of the European Central Bank

(ECB/1998/12)

(1999/284/EC)

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 (hereinafter referred to as the 'Statute') and in particular to Article 12.3 thereof,

Having regard to the Rules of Procedure of the European Central Bank (ECB) and in particular to Articles 23.2 and 23.3 thereof,

Whereas the Declaration on the right of access to information annexed to the Final Act of the Treaty on European Union emphasises that transparency of the decision-making process strengthens the democratic nature of the institutions and the public's confidence in the administration;

Whereas the European Council in Birmingham and Edinburgh agreed on a number of principles to promote a Community closer to its citizens;

Whereas the European Council in Copenhagen reaffirmed the principle of giving citizens the greatest possible access to information;

Whereas citizens have a legitimate interest in the organisation and functioning of institutions and bodies that are financed from public funds;

Whereas Decision No 9/97 of the Council of the European Monetary Institute (EMI) of 3 June 1997⁽¹⁾ foresees that the public shall have access to EMI administrative documents; whereas the EMI went into liquidation on 1 June 1998; whereas it is required to specify the principles which will govern access to the documentation and the archives of the ECB;

Whereas the European Ombudsman issued a Decision in the own initiative inquiry into public access to documents⁽²⁾; whereas the recommendations of that Decision applied to the EMI only in relation to administrative documents; whereas the same limitations of the scope of application of the Decision are applicable to the ECB;

Whereas, in accordance with Article 10.4 of the Statute, the proceedings of the meetings of the Governing Council of the ECB are confidential, but the Governing Council of the ECB may decide to make the outcome of its deliberations public;

Whereas, in accordance with Article 23.1 of the Rules of Procedure of the ECB, the proceedings of the decision-making bodies of the ECB and of any committee or group established by them are confidential unless the Governing Council of the ECB authorises the President of the ECB to make the outcome of their deliberations public;

Whereas, in accordance with Article 23.2 of the Rules of Procedure of the ECB, all documents drawn up by the ECB are confidential unless the Governing Council of the ECB decides otherwise;

Whereas this Decision is an additional element in the ECB's information and communication policy; whereas clear rules can promote good administration by helping officials to deal accurately and promptly with requests from the public for documents;

Whereas the ECB, before granting access to any document containing information obtained from the central bank of a Member State, will consult that national central bank;

Whereas, in accordance with Article 11.6 of the Statute, the Executive Board of the ECB is responsible for the current business of the ECB,

⁽¹⁾ OJ L 90, 25.3.1998, p. 43.

⁽²⁾ 616/PUBAC/F/IJH of 20 December 1996.

HAS ADOPTED THIS DECISION:

Article 1

Access to administrative documents

1. The public shall have access to documentation and the archives of the ECB with regard to administrative documents in accordance with the provisions of this Decision.

2. For the purposes of this Decision, 'administrative document' shall mean any record, whatever its medium, which contains existing data and which relates to the actual organisation and functioning of the ECB. In addition, it shall mean any such record relating to the organisation and functioning of the EMI.

Article 2

Application for access

An application for access to an administrative document shall be sent in writing to the ECB⁽¹⁾. The ECB shall endeavour to comply with the application. If the application is not made in a sufficiently precise manner or does not contain information enabling the requested document to be identified, the ECB shall ask the applicant to complete the application by providing further details.

Article 3

Form of access; costs; commercial reproduction

1. An applicant shall have access to an administrative document either by consulting it at the premises of the ECB or by having a copy sent at his/her own expense. A fee of ECU 10 (EUR 10 as from 1 January 1999) shall be charged for copies of printed documents exceeding 100 pages in total, plus ECU 0,05 (EUR 0,05 as from 1 January 1999) per sheet of paper.

2. The ECB shall endeavour to find a fair solution to deal both with repeated applications by the same applicant for the same administrative document and with applications which relate to a large number of or very long administrative documents.

3. No one who has been given access to an administrative document in accordance with this Article may reproduce or circulate the document for commercial purposes through direct sale without prior authorisation

⁽¹⁾ Addressed to the European Central Bank, Directorate External Relations, Kaiserstraße 29, D-60311 Frankfurt am Main.

from the ECB, which may be withheld without there being any requirement to give a reason.

Article 4

Exceptions

Access to an administrative document shall not be granted where its disclosure could undermine:

- the protection of the public interest, in particular public security, international relations, monetary and exchange rate stability, court proceedings, inspections and investigations,
- the protection of the individual and of privacy,
- the protection of copyright and of commercial, banking and industrial secrecy,
- the protection of the ECB's financial interests,
- the protection of confidentiality as requested by any natural or legal person who supplied any of the information contained in the document or as required by the law applicable to such person.

Article 5

Decision on application; confirmatory application; judicial review

1. The ECB shall endeavour to deal with the application within a reasonable period of time. Within one month, at the latest, the applicant shall be informed in writing by the Director for External Relations of the ECB either that the application has been approved or that the intention is to reject it. In the latter case, the applicant shall also be informed of the grounds for this intention and informed that he/she has one month within which to make a confirmatory application for the position to be reconsidered, failing which he/she will be deemed to have withdrawn the original application.

2. Failure to reply to an application within a month of submission shall be equivalent to a rejection, except where the applicant makes a confirmatory application, as referred to above, during the course of the following month.

3. A decision on a confirmatory application shall be taken by the Executive Board of the ECB within one month of receipt.

4. Any decision to reject a confirmatory application shall state the grounds upon which it is based. The applicant shall be notified of the decision in writing as soon as possible and at the same time be informed of the

content of Articles 138e and 173 of the Treaty establishing the European Community, which relate to the conditions for referral to the Ombudsman by natural persons and for the review of the legality of ECB acts by the Court of Justice respectively.

5. Failure to reply within a month of submitting the confirmatory application shall be equivalent to a rejection.

Article 6

Replacement of EMI Decision No 9/97

Decision No 9/97 of the Council of the EMI shall be replaced by this Decision with immediate effect.

Done at Frankfurt am Main, 3 November 1998.

The President of the ECB

Willem F. DUISENBERG
