

NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 30 JUNE 2005

CASE NUMBER: 2004/277

NOTIFICATION OF: EUROPEAN CENTRAL BANK

LEGAL BASIS: ARTICLE 27-5 OF THE REGULATION CE N° 45/2001⁽¹⁾

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

Head of Recruitment and Staff Development Division
European Central Bank
Kaiserstrasse 29
D-60311 Frankfurt am Main

2/ ORGANISATIONAL PARTS OF THE INSTITUTION OR BODY ENTRUSTED WITH THE PROCESSING OF PERSONAL DATA

Directorate Human Resources - Recruitment and Staff Development Division

3/ NAME OF THE PROCESSING

Recording of the absences of ECB staff members unable to work because of illness or accident.

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

4/ PURPOSE OR PURPOSES OF THE PROCESSING

In order to implement the relevant legal provisions as they are laid down in the ECB Conditions of Employment and the ECB Staff Rules, the Controller has to record the absences of ECB staff related to illness or accident. According to the aforementioned rules there is a distinction between sick leave without medical certificate and sick leave with medical certificate provided.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

All staff members with permanent or fixed term contracts are subject to the “Conditions of Employment for staff at the ECB” and the “ECB Staff Rules”; all staff members with a short-term contract are subject to the Conditions of Short-term Employment and the Rules for Short-term Employment. Therefore all members of staff are potential data subjects for the relevant data processing operations.

6/ DESCRIPTION OF THE DATA OR CATEGORIES OF DATA *(including, if applicable, special categories of data (Article 10) and/or origin of data).*

Basic personal data of staff members and data related to their absences when unable to work because of illness or accident. Those data could be divided in the following three categories:

1) Data related to “sick leave” without medical certificate provided:

The Controller receives the information about the absence from the immediate manager of the staff member concerned in most cases via e-mail and records the data as it is described below (automated/manual processing operation). The message includes only the basic data of the staff member and the date(s) of absence. The reason for processing that information is to ensure that the uncertified absences do not exceed ten working days per annum according to Article 5.13.2 of the Staff Rules or Article 5.10.2 of the ECB Rules for Short-term Employment.

2) Data related to “sick leave” with medical certificate provided:

The Controller receives the medical certificate forwarded from the respective manager of the staff member concerned following the procedure described in Article 5.13.2 of the ECB Staff Rules or 5.10.2 of the Rules for Short-term Employment. The medical certificate indicates the date on which the sickness commenced and the date on which it is expected to end or to be reviewed by the staff member’s doctor. The certificate contains basic data of the staff member and the doctor..

3) “Secondary” data concerning all kind of absences:

Data deriving from both aforementioned categories are stored in electronic format in the personal Information System (PERBIT), where all kind of absences (including annual leave, special leave etc.) are recorded in different coloured icons per absence category.

The medical certificates belonging to category 2 (above), could contain some “health data as such” falling under Art. 10 of the Regulation, insofar, as it provides information on the specialization of the physician signing the medical certificate. The other data processed just give information on the frequency, length and category (with/without certificate) of sick leave absences, from which hardly or only indirectly “conclusions” regarding the general health status/behaviour of the respective staff member can be drawn.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

Staff members are informed about the most important provisions laid down in the Conditions of Employment for staff of the ECB and the ECB Staff Rules or Conditions of Short-term Employment and the Rules for Short-term Employment, which describe the rules and procedures concerning all kind of absences, when they start working at the ECB in specifically organized “induction seminars”. The relevant documents are also published on the ECB’s intranet site. Staff members can contact the Controller for any additional information falling under the scope of Art. 11 and 12 of the Regulation.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

(Rights of access, to rectify, to block, to erase, to object)

a) As to the right of access (Art. 13):

- 1) Once the original medical certificates are incorporated in the personal file the general rules set out in Article 7 Conditions of Employment / Article 12 Conditions for Short-term Employment and Article 1.3 ECB Staff Rules / Article 1.3 Rules for Short-term Employment apply. According to these articles each member of staff has the right at any time, even after leaving the ECB, to access his/her personal file and consequently to the information concerning sick leave records.
- 2) For accessing the data in the separate folders (kept centrally by the Controller) where printed e-mails with the business areas’ notifications of staff members’ uncertified sick leaves are stored, the data subject shall contact the Controller.
- 3) For accessing the data contained in the Personal Information System (PERBIT) where all kind of absences are recorded in electronic format, the data subject shall contact the Controller and ask for a printout.

b) As to the exercise of all other rights laid down in Section 5 of the Regulation, the data subject shall contact the Controller.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

Personal data related to sick leaves undergo both automated and manual processing operations depending on the category they belong to:

(a) Manual Processing operations take place:

1) Upon the personal file of staff members where the sick leave confirmation in the form of a medical certificate signed by the respective physician is filed as original.

According to the ECB Staff Rules, there shall be only one personal file for each member of staff. The details regarding the handling of personal files of staff members can be found in Article 1.3 of the ECB Staff Rules / Article 1.3 of the Rules for Short-term Employment. The medical file does not form part of the personal file. The medical file shall be retained by the ECB's Medical Adviser, who will be solely responsible for it.

2) Upon a separate file (kept centrally by the Controller), where printed e-mails with the business areas' notifications of staff members' uncertified sick leaves are filed.

(b) Automated processing operations take place:

In the Personal Information System (PERBIT), where all kind of absences are recorded with different coloured icons per absence category (sick leave with certificate, sick leave without certificate, annual leave, special leave etc.).

10/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

Conditions of Employment for staff of the ECB (Art. 31) / Conditions of Short-term Employment (Art. 28) and ECB Staff Rules (Art. 5.13) / Rules for Short-term Employment (Art. 5.10).

11/ THE RECIPIENTS OR CATEGORIES OF RECIPIENT TO WHOM THE DATA MIGHT BE DISCLOSED

1) As concerns the part of data contained in the personal file according to the Staff rules/Rules for Short-term Employment the only recipients of the documents in the personal file (i.e. sick leave information) can be:

a) The member of staff concerned

b) Members of the Executive Board;

c) Members of staff who, for professional reasons, need to have access to the information contained in the file and whose access is authorised by the Director Human Resources. These parties will be subject to the legal obligation of professional secrecy;

d) A member of staff may authorise the Directorate Human Resources - subject to the approval of the Executive Board - to make his/her personal file available to third parties.

2) As concerns the data contained in the Personal Information System (PERBIT), on a quarterly basis reports are produced and sent to the local managers for information/reconciliation purposes

12/ GENERAL INDICATION OF THE TIME LIMITS

FOR BLOCKING: -----

There is no special period foreseen for blocking the data.

AND/OR

FOR ERASING: -----

- 1) As concerns data contained in the personal files, files shall be destroyed 10 years after staff members have left the ECB if there are no pending claims or any other still open issues concerning their ECB employment relationship. The personal file of pensioners will be destroyed 10 years after the end of the year in which the last ECB pension payment was made to either the pensioner or one of his entitled dependants, respectively, provided that there are no pending claims or other still open issues.
- 2) As concerns data contained in the separate file, where printed e-mails sent by the business areas as notification of staff member's sick leave are filed, they will be erased after 3 years..
- 3) As concerns data contained in the Personal Information System (PERBIT), they will be erased 10 years after the staff member has left the ECB.

OF THE DIFFERENT CATEGORIES OF DATA *(Please, specify the time limits for every category, if applicable)*

n/a

13/ HISTORICAL, STATISTICAL OR SCIENTIFIC PURPOSES

If you store data for longer periods than mentioned above, please specify, if applicable, why the data must be kept under a form which permits identification.

There are no specific rules or procedures in place concerning longer storage periods for historical, statistical or scientific purposes.

14/ PROPOSED TRANSFERS OF DATA TO THIRD COUNTRIES OR INTERNATIONAL ORGANISATIONS

There are no proposed transfers of data to third countries or international organisations.

15/ THE PROCESSING OPERATION PRESENTS SPECIFIC RISK WHICH JUSTIFIES PRIOR CHECKING (*Please describe*):

AS FORESEEN IN:

x Article 27.2.(a)

Processing of data relating to health and to suspected offences, offences, criminal convictions or security measures,

1 Article 27.2.(b)

Processing operations intended to evaluate personal aspects relating to the data subject,

1 Article 27.2.(c)

Processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes,

1 Article 27.2.(d)

Processing operations for the purpose of excluding individuals from a right, benefit or contract,

1 Other (general concept in Article 27.1)

16/ COMMENTS

The ECB's DPO, in carrying out his duty to ensure that the ECB is in compliance with the Regulation, has initiated an ECB-internal discussion on the current wording of the ECB Staff Rules in Section 5.13.2. In this context, the DPO recommended to amend the Staff Rules in order to request staff members to send the medical certificate directly to the Controller rather than via their immediate manager. This advice was based on the argument that there is no business need for the local manager to see the certificate with the information which kind of doctor has been consulted by the staff member in question (Art. 4.1 (c) and 5 (a) of the Regulation).

In 2002, the ECB's DPO recommended to inform ECB managers that all backward-looking sick leave data should be removed from local absence planners (usually accessible by all staff in a business area via shared drives) on a regular basis, at the latest once the quarterly reconciliation exercise with the Controller's PERBIT report has been completed. On 4 December 2002 the responsible Division in Directorate Human Resources sent a note with the relevant instructions as regards the handling of historic information to all ECB Management.

Place and date: Frankfurt am Main, 30 June 2005

Data Protection Officer: Wolfgang Sommerfeld [*signed*]

Institution or body: European Central Bank