DECISIONS

DECISION (EU) 2023/1610 OF THE EUROPEAN CENTRAL BANK

of 28 July 2023

establishing the historical archives of the European Central Bank and amending Decision ECB/2004/2 *(ECB/2023/17)*

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Articles 12.3 and 14.3 thereof,

Having regard to Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community [1], and in particular Article 9(1) thereof,

Whereas:

(1) Regulation (EEC, Euratom) No 354/83 seeks to ensure that documents of historical or administrative value are preserved and made available to the public wherever possible. To that end, it lays down the obligation for each Union institution, including the European Central Bank (ECB), to establish its historical archives and open them to the public on the terms provided for by the Regulation after the expiry of a period of 30 years starting from the date of the creation of a document.

(2) In adopting this Decision, the ECB exercises its right to hold and manage its historical archives without depositing them at the European University Institute (EUI) and lays down the internal rules necessary for applying Regulation (EEC, Euratom) No 354/83. The objective of these internal rules is to operationalise the preservation and opening to the public of the ECB's historical archives whilst duly taking into account the ECB's institutional particularities.

(3) Article 1(2), point (a), of Regulation (EEC, Euratom) No 354/83 defines the term 'archives of the institutions of the European Communities'. In view of both the highly integrated structures in which the ECB operates, namely the European System of Central Banks (ESCB) and the Eurosystem, and the transfer of functions to the ECB from bodies that worked towards completing Economic and Monetary Union (EMU), the ECB's archives must be understood as having a broader scope than that defined in Article 1(2), point (a), of Regulation (EEC, Euratom) No 354/83. First, in accordance with the established case-law of the Court of Justice of the European Union, they encompass all documents of whatever type and in whatever medium which have originated in or been received by the ECB or the national central banks (NCBs) in connection with the performance of the tasks of the ESCB and the Eurosystem, irrespective of whether they are held by the ECB or the NCBs [2]. Second, they encompass all documents of whatever type and whatever medium which originated in or were received by the Committee for the Study of Economic and Monetary Union (hereinafter the 'Delors Committee'), the Committee of Governors of the Central Banks of the Member States of the European Economic Community (hereinafter the 'COG'), the European Monetary Cooperation Fund (EMCF) and the European Monetary Institute (EMI), and are held by the ECB.

(4) The second sentence of Article 23.3 of Decision ECB/2004/2 of the European Central Bank [3] authorises the ECB's decision-making bodies to make accessible to the public documents belonging to the ECB archives before the expiry of the 30-year period. On 7 May 2019, the ECB's Governing Council decided to make accessible to the public documents that originated in or were received by the Delors Committee and were transferred from the Bank for International Settlements, which hosted most meetings of that Committee, to the ECB in 2005. On 23 January 2020, the ECB's Governing Council decided to make accessible to the public documents that originated in or were

[1] OJ L 43, 15.2.1983, p. 1.
[2] Judgment of the Court of Justice of 17 December 2020, *Commission* v *Slovenia*, C-316/19, EU:C:2020:1030.
[3] Decision ECB/2004/2 of the European Central Bank of 19 February 2004 adopting the Rules of Procedure of the European Central Bank (OJ L 80, 18.3.2004, p. 33).

received by the COG, the EMCF and the EMI, and are held by the ECB. This Decision implements those Governing Council decisions and the documents concerned will be made available to the public following their declassification to 'ECB-PUBLIC', irrespective of the expiry of the 30-year period.

(5) Article 2 of Regulation (EEC, Euratom) No 354/83 recognises that exceptions may apply to the rule that documents of historical or administrative value be made available to the public wherever possible and refers in this context to Regulation (EC) No 1049/2001 of the European Parliament and of the Council ([4]). As Regulation (EC) No 1049/2001 does not apply to the ECB, exceptions to the rule that documents of historical or administrative value be made available to the public follow from Decision ECB/2004/3 of the European Central Bank ([5]). Article 4(6) of Decision ECB/2004/3 states that for documents covered by the exceptions relating to privacy or commercial interests, the exceptions may continue to apply after the maximum period of 30 years. For documents covered by other exceptions laid down in Article 4 of Decision ECB/2004/3, the exceptions may apply for a maximum period of 30 years unless specifically provided otherwise by the ECB's Governing Council.

(6) Given that documents belonging to the ECB archives and related to the performance of the tasks of the ESCB and the Eurosystem are also held by the NCBs, which may want to make such documents available to the public as part of their own historical archives or be requested to transfer them to a third party, such as a national historical archive, the internal rules necessary for applying Regulation (EEC, Euratom) No 354/83 also need to address the NCBs. As NCBs are an integral part of the ESCB and the Eurosystem, they neither qualify as Member States within the meaning of Article 6 of Regulation (EEC, Euratom) No 354/83 nor as third parties within the meaning of this Decision. It is appropriate that the ECB and the NCBs closely cooperate to ensure that the ECB historical archives are processed consistently and with the appropriate care throughout the ESCB and the Eurosystem.

(7) Documents belonging to the ECB archives may have been transferred to a third party, such as a national historical archive, by NCBs before the entry into force of this Decision. In such cases, it is appropriate that the NCBs ensure that those third parties may not make such documents available to the public before the expiry of the 30-year period. In addition, where the ECB holds the same documents as those transferred to such third parties, NCBs must ensure that those third parties only make such of those documents available to the public after 30 years as have been declassified to 'ECB-PUBLIC' by the ECB. National historical archives and other national public authorities are obliged, under the principle of sincere cooperation enshrined in Article 4(3) of the Treaty on European Union and Article 18 of the Protocol on the privileges and immunities of the European Union, to act in good faith so as to preclude the premature release of ECB archives documents or the release of classified documents.

(8) Pursuant to Regulation (EU) 2018/1725 of the European Parliament and of the Council ([6]), the ECB is required to provide information to data subjects on the processing of personal data concerning them and to respect their rights as data subjects. However, the ECB should balance such rights with the objectives of archiving in the public interest in accordance with data protection law.

(9) Article 16(5), point (b), and Article 19(3), point (d), of Regulation (EU) 2018/1725 provide for exceptions to, respectively, a data subject's right to information and right to erasure for processing data for archiving purposes in the public interest, insofar as those rights are likely to render impossible or seriously impair the achievement of the objectives of that processing. The right to information should in principle not apply in the particular context of the ECB historical archives, as the ECB would be required to make a disproportionate effort to provide information on processing once its historical archives have been made available to the public. Nonetheless, it is appropriate that

([4]) 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 documents (OJ L 145, 31.5.2001, p. 43).

([5]) Decision ECB/2004/3 of the European Central Bank of 4 March 2004 on public access to European Central Bank documents (OJ L 80, 18.3.2004, p. 42).

([6]) Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

data subjects be informed about the possibility that their personal data may be made publicly available as part of the ECB historical archives at the same time as they are informed about the processing operations for which their personal data have been initially collected. Also, the right to erasure should in principle not apply in the particular context of the ECB historical archives, taking into account the size and in part physical nature of the ECB archives and the nature of archiving in the public interest, insofar as the erasure of personal data contained in the ECB archives would undermine the validity, integrity and authenticity of the ECB historical archives and is therefore likely to seriously impair the achievement of the objectives of archiving in the public interest.

(10) Article 25(4) of Regulation (EU) 2018/1725 allows the ECB the possibility to provide for derogations from the rights referred to in Articles 17, 18, 20, 21 and 23 of that Regulation, insofar as those rights are likely to render impossible or seriously impair the achievement of the purpose of archiving in the public interest and derogations are necessary for the fulfilment of such purpose. In adopting this Decision, the ECB provides for derogations from the rights referred to in Articles 17, 18, 20, 21 and 23 of Regulation (EU) 2018/1725 subject to organisational and technical safeguards required by Article 13 of that Regulation. Granting access to personal data if a data subject request does not provide specific information regarding the processing to which the request relates may involve a disproportionate effort or be practically impossible, given the size of the ECB historical archives. The rectification, erasure or restriction of processing of personal data would undermine the integrity and authenticity of the ECB historical archives and defeat the purpose of archiving in the public interest. However, in duly justified cases of inaccurate personal data, the ECB may decide to include a supplementary statement or annotation to the relevant document. Communicating any rectification, erasure or restriction of processing of personal data may involve a disproportionate effort or be practically impossible. As personal data form an integral and indispensable part of the ECB historical archives, granting the right to object to the processing of personal data contained in the ECB archives would render impossible the achievement of the purpose of archiving in the public interest.

(11) The ECB is not to make available to the public documents containing special categories of personal data referred to in Article 10 of Regulation (EU) 2018/1725, personal data relating to criminal convictions and offences referred to in Article 11 of Regulation (EU) 2018/1725 or personal data of a child below the age of 13 years. Given the large volume of documents and the improbability of documents containing sensitive personal data having administrative or historical value, making such documents available to the public would lead to a considerable delay and therefore seriously impair the archiving process. Recital 6 of Regulation (EU) 2018/1725 states that the Regulation should not apply to the processing of personal data of deceased persons. Since in most cases the ECB cannot establish whether the data subject is deceased, it is appropriate as an additional safeguard that the period for opening an ECB historical archives document containing such sensitive personal data under Articles 10 and 11 of Regulation (EU) 2018/1725 or data relating to the privacy and the integrity of the individual under Article 4 of Decision ECB/2004/3 is set to one hundred years after the creation of that document.

(12) The European Data Protection Supervisor was consulted in accordance with Article 41(2) of Regulation (EU) 2018/1725 and delivered an opinion on 5 October 2022. The ECB implemented the recommendations of the European Data Protection Supervisor.

(13) The second sentence of Article 23.3 of Decision ECB/2004/2 is amended to clarify that documents belonging to the ECB archives are only freely accessible after the expiry of the 30-year period in accordance with this Decision unless the decision-making bodies decide to shorten that period, such as in the case of the documents that originated in or were received by the Delors Committee, the COG, the EMCF and the EMI, and are held by the ECB, or prolong it, such as potentially in the case of individual proceedings of the meetings of the Governing Council, should a case-by-case assessment disprove the assumption that the independence of the decision-making process of the Governing Council is no longer threatened after 30 years,

HAS ADOPTED THIS DECISION:

Article 1

Subject matter

This Decision lays down the rules concerning the preservation and opening to the public of the ECB historical archives.

Article 2

Definitions

For the purposes of this Decision:

(1) 'ECB's predecessors' means the Committee for the Study of Economic and Monetary Union, the Committee of Governors of the Central Banks of the Member States of the European Economic Community, the European Monetary Cooperation Fund and the European Monetary Institute;

(2) 'ECB archives' means:

(a) all documents of whatever type and in whatever medium which have originated in or been received by the ECB or the NCBs in connection with the performance of the tasks of the ESCB and the Eurosystem, irrespective of whether they are held by the ECB or the NCBs; and

(b) all documents of whatever type and in whatever medium which have originated in or been received by the ECB's predecessors and are held by the ECB;

(3) 'ECB historical archives' means all documents of historical or administrative value that are part of the ECB archives and have been selected for permanent preservation;

(4) 'date of creation' means:

(a) in the case of digital documents that are created within the ECB's document management system, the date on which the document was last edited or on which the latest version was added;

(b) in the case of paper documents that are placed in a physical file, the date of the most recent substantive document in the file;

(c) in the case of paper documents that are in bound volume format, the year of the most recent substantive entry in the volume or of the most recent substantive comment or annotation, whichever is the later; and

(d) in the case of an image, such as an architectural drawing, photograph or moving image, the date of creation or the year of the last amendment to the image or drawing, whichever is the later;

(5) 'national central bank' or 'NCB' means a central bank of a Member State;

(6) 'third party' means any natural or legal person or any entity outside the ESCB;

(7) 'appraisal' means an ongoing sorting process of ECB archives to identify documents that should be preserved for historical archiving purposes;

(8) 'preservation' means the set of activities necessary to ensure continued access to, and to minimise the loss of information content in, documents selected to be part of the ECB historical archives;

(9) 'classified document' means an ECB historical archives document that has been assigned one of the four following security classifications under the ECB's confidentiality regime [7] that does not authorise its release to the public, namely: 'ECB-SECRET', 'ECB-CONFIDENTIAL', 'ECB-RESTRICTED' and 'ECB-UNRESTRICTED';

(10) 'declassified document' means an ECB historical archives document that has been assigned the security classification of 'ECB-PUBLIC' under the ECB's confidentiality regime;

[7] The ECB's confidentiality regime is published on the ECB's website.

(11) ‘personal data’ means personal data within the meaning of Article 3, point (1) of Regulation (EU) 2018/1725;

(12) ‘children’s personal data’ means personal data of children below the age of 13 years;

(13) ‘sensitive personal data’ means special categories of personal data referred to in Article 10 of Regulation (EU) 2018/1725, personal data relating to criminal convictions and offences referred to in Article 11 of Regulation (EU) 2018/1725 and children’s personal data;

(14) ‘controller’ means controller within the meaning of Article 2, point (1), of Decision (EU) 2020/655 of the European Central Bank (ECB/2020/28) ([8]).

Article 3

Appraisal and preservation

1. The ECB shall carry out an appraisal to identify which ECB archives documents held by it shall be preserved and which documents have no administrative or historical value and shall be disposed of.

2. The policy objectives of the appraisal carried out by the ECB are to identify and preserve document classes that:

(a) provide evidence of the source of authority, foundation, organisation and functioning of the ECB and its predecessors, the ESCB, the Eurosystem, as well as any relevant Committees, Working Groups and Task Forces;

(b) provide evidence of the activities of the ECB and its predecessors, the ESCB, the Eurosystem, as well as any relevant Committees, Working Groups and Task Forces relating to key functions and significant programmes and issues;

(c) substantially contribute to the knowledge and understanding of the Member States whose currency is the euro and/or their institutions and their citizens; of the impact of the activities of the ECB and its predecessors and/or the ESCB and the Eurosystem on the external environment; and/or of the interaction of people and organisations with the Union institutions and bodies;

(d) substantially contribute to the knowledge and understanding of aspects of the ECB’s and its predecessors’ corporate culture.

3. Irrespective of the outcome of the appraisal referred to in paragraphs 1 and 2, the ECB shall hold ECB archives documents in compliance with the retention requirements set out in the ECB Filing and Retention Plan ([9]).

Article 4

Declassification

1. The ECB shall in good time and not later than the 25th year following the date of the creation of a classified document, examine categories of classified documents held by it in order to decide whether or not to declassify them to ‘ECB-PUBLIC’. The ECB shall re-examine ECB historical archives documents, or categories of documents, held by it which have not been declassified to ‘ECB-PUBLIC’ following the first such examination at least every five years thereafter.

([8]) Decision (EU) 2020/655 of the European Central Bank of 5 May 2020 adopting implementing rules concerning data protection at the European Central Bank and repealing Decision ECB/2007/1 (ECB/2020/28) (OJ L 152, 15.5.2020, p. 13).

([9]) The latest version of the ECB Filing and Retention Plan was approved by the Executive Board at its meeting on 7 June 2022. It is regularly updated and published on the ECB’s website.

2. In accordance with Article 2(3) of Regulation (EEC, Euratom) No 354/83, before deciding to declassify and make available to the public ECB historical archives documents which, if disclosed, could undermine the commercial interests of a natural or legal person, including intellectual property, the ECB shall publish a notice in the *Official Journal of the European Union* to inform the persons or undertakings concerned and invite them to submit observations within a period of no less than eight weeks as specified in the notice, with a view to assessing whether the documents shall or shall not be released.

Article 5

Opening declassified documents held by the ECB to the public

1. The ECB shall make available to the public declassified documents held by it if they originated in or were received by the ECB's predecessors.

2. The ECB shall make available to the public pursuant to paragraphs 3 and 4 declassified documents held by it, other than those referred to in paragraph 1, 30 years after the date of their creation.

3. The ECB shall make accessible online, wherever possible, declassified documents referred to in paragraph 2 via the ECB's online communications platforms.

4. Where it is not possible to make the declassified documents referred to in paragraph 2 available online pursuant to paragraph 3, the ECB shall make them available to applicants either at the ECB's premises or, where deemed suitable by the ECB, by releasing a digital copy of the requested documents, under the following conditions:

(a) an application to access a declassified document is made in any written form, including electronic form, in one of the official languages of the Union in a sufficiently precise manner to enable the ECB to identify the requested documents;

(b) documents are supplied in their latest version in the format (including electronic) and in the language(s) in which they were created.

If an application for access to a declassified document is not sufficiently precise for the purposes of point (a), the ECB shall ask the applicant to clarify it and shall assist the applicant in doing so.

Article 6

Documents concerning the performance of the tasks of the ESCB and the Eurosystem held by NCBs

1. NCBs shall carry out an appraisal to identify which ECB archives documents held by them shall be preserved and which documents have no historical or administrative value and shall be disposed of. They shall pursue the policy objectives set out in Article 3(2) in their appraisal and respect the retention requirements referred to in Article 3(3). Where an NCB and the ECB hold the same ECB archives documents, NCBs shall align their appraisal with the outcome of the appraisal carried out by the ECB under Article 3.

2. NCBs shall in good time, and not later than the 25th year following the date of the creation of a classified document, examine categories of classified documents held by them in order to decide whether or not to declassify them to a level that is equivalent to the 'ECB-PUBLIC' classification. Where an NCB and the ECB hold the same ECB archives documents, NCBs shall align their decision on declassification with the outcome of the decision on declassification taken by the ECB in compliance with Article 4(1). NCBs shall not make declassified documents available to the public or transfer them to a third party before the expiry of the 30-year period starting from the date of the creation of a document.

Article 7

ECB archives documents concerning the performance of the tasks of the ESCB and the Eurosystem held by third parties

Where an NCB has transferred ECB archives documents to a third party, that NCB shall ensure that:

(a) where the ECB holds the same documents as those transferred to that third party and that third party carries out an appraisal of those documents, the appraisal of that third party shall be aligned with the outcome of the appraisal carried out by the ECB under Article 3;

(b) where the ECB holds the same documents as those transferred to that third party and that third party examines the security classifications of those documents, a decision on declassification of that third party shall be aligned with the outcome of the decision on declassification taken by the ECB in compliance with Article 4(1); and

(c) the third party shall not make declassified documents available to the public before the expiry of the 30-year period starting from the date of the creation of the documents.

Article 8

Processing of personal data and obligations of controller

1. The ECB may derogate from the rights of data subjects pursuant to Article 25(4) Regulation (EU) 2018/1725, insofar as is necessary to fulfil archiving purposes in the public interest and to preserve the integrity of the ECB historical archives, including in particular from the following rights:

(a) the right of access ([10]), where the request of the data subject does not allow for the identification of specific ECB archives documents without involving disproportionate administrative effort and, in assessing the action to be taken on the request of the data subject and the administrative effort required, particular account shall be taken of the information provided by the data subject and the nature, scope, volume and size of the ECB archives documents potentially concerned;

(b) the right to rectification ([11]), where rectification renders it impossible to preserve the integrity and authenticity of ECB historical archives documents, without prejudice to the possibility of a supplementary statement or annotation to the document concerned, unless this proves impossible or involves disproportionate effort;

(c) the right to restriction of processing ([12]), where processing is necessary to preserve the integrity and authenticity of ECB historical archives documents and/or is in the public interest;

(d) the obligation to notify the rectification or erasure of personal data ([13]), insofar as this proves impossible or involves disproportionate effort;

(e) the right to object to the processing ([14]), where the personal data are contained in ECB historical archives documents as an integral and indispensable part of those documents.

2. The ECB shall implement appropriate safeguards to ensure compliance with Article 13 of Regulation (EU) 2018/1725. Such safeguards shall include technical and organisational measures, in particular, in order to ensure respect for the principle of data minimisation. The safeguards shall include:

(a) establishing procedures to protect personal data, such as systematically deleting and destroying files containing personal data in line with the ECB Filing and Retention Plan;

(b) establishing controlled procedures to enable access to documents where the existence of personal data cannot be ascertained;

([10]) Article 17 of Regulation (EU) 2018/1725.
([11]) Article 18 of Regulation (EU) 2018/1725.
([12]) Article 20 of Regulation (EU) 2018/1725.
([13]) Article 21 of Regulation (EU) 2018/1725.
([14]) Article 23 of Regulation (EU) 2018/1725.

(c) not releasing sensitive personal data; and

(d) pseudonymisation and anonymisation measures.

3. The controller is required to:

(a) inform data subjects about the fact that documents containing their personal data may be made available to the public as part of the ECB historical archives;

(b) consult the data protection officer prior to a decision to derogate from data subject rights in a particular case and document this consultation;

(c) record any derogations applied pursuant to paragraph 1 as well as the reasoning that justifies the derogation;

(d) make available any documents containing underlying factual and legal elements to the European Data Protection Supervisor upon request.

Article 9

Protection of sensitive personal data

The ECB shall not make available to the public ECB historical archives documents held by it containing sensitive personal data or data relating to the privacy and the integrity of the individual under Article 4 of Decision ECB/2004/3, including archival descriptions or authority records, before the expiry of a period of one hundred years starting from the date of creation of those documents.

Article 10

Reproduction of ECB historical archives

1. ECB historical archives, or any descriptive information concerning such archives, released via the ECB's online communications platforms and 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 its reasons for doing so.

2. This Decision shall be without prejudice to any rules on copyright which may limit a third party's right to reproduce or exploit any released documents.

Article 11

Annual publication of information on activities

The ECB shall annually publish information on its historical archiving activities via the ECB's online communications platforms.

Article 12

Coordination

The ECB shall establish an ECB historical archives coordination group with representatives from the ECB and the NCBs chaired by the ECB's Information Governance Division. It shall discuss the application of this Decision with the aim of ensuring that the ECB historical archives are processed consistently and with the appropriate care throughout the ESCB and the Eurosystem. For this purpose, it shall also assist the ECB's Information Governance Division in establishing a set of operational measures and procedures to be applied.

Article 13

Amendment to Decision ECB/2004/2

The second sentence of Article 23.3 of Decision ECB/2004/2 is replaced by the following:

‘They shall be freely accessible after the expiry of a period of 30 years starting from their date of creation in accordance with the Decision (EU) 2023/1610 of the European Central Bank (ECB/2023/17) (*) unless the decision-making bodies decide to prolong or shorten that period.

(*) Decision (EU) 2023/1610 of the European Central Bank of 28 July 2023 establishing the historical archives of the European Central Bank and amending Decision ECB/2004/2 (ECB/2023/17) (OJ L 198, 08.08.2023, p. 30).’.

Article 14

Entry into force

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

Done at Frankfurt am Main, 28 July 2023.

The President of the ECB
Christine LAGARDE