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- ★ **Decision No 2/2021 of the Partnership Council established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part of 21 December 2021 as regards the extension of the interim period during which the United Kingdom may derogate from the obligation to delete Passenger Name Record data of passengers after their departure from the United Kingdom [2021/2323]** 6

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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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II

(Non-legislative acts)

DECISIONS

DECISION (EU) 2021/2321 OF THE EUROPEAN CENTRAL BANK

of 10 December 2021

on the delegation of decisions on the issuing of Union *laissez-passer* for applicants falling under the authority of the European Central Bank (ECB/2021/55)

THE PRESIDENT OF THE EUROPEAN CENTRAL BANK,

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

Having regard to Protocol (No 7) on Privileges and Immunities of the European Union, and in particular Article 6 thereof,

Whereas:

- (1) The European Central Bank (ECB) authorises the issuance of Union *laissez-passer* for members of staff of the ECB, short-term contract employees of the ECB and their family members. The Union *laissez-passer* should be recognised by the Member States as a valid travel document.
- (2) As the power to issue Union *laissez-passer* is conferred on the Presidents of Union institutions, this means that in the ECB's case the President of the ECB has this power.
- (3) Council Regulation (EU) No 1417/2013 ⁽¹⁾ establishes a common form for the issuing of Union *laissez-passer*. Since 2015, Union *laissez-passer* are issued as e-travel documents under a centralised procedure, with the Commission acting as a central point for other Union institutions in accordance with service level agreements implementing the Union *laissez-passer* scheme.
- (4) Given the volume of requests to issue Union *laissez-passer* for members of staff of the ECB, short-term contract employees of the ECB and their family members, the power to issue them should be delegated to the Chief Services Officer, with the possibility to sub-delegate it to the operational level of the ECB,

HAS ADOPTED THIS DECISION:

Article 1

Definitions

For the purposes of this Decision, the following definitions shall apply:

- (1) 'Union *laissez-passer*' means a secure travel document as provided for in Article 6 of Protocol (No 7) on Privileges and Immunities of the European Union;

⁽¹⁾ Council Regulation (EU) No 1417/2013 of 17 December 2013 laying down the form of the *laissez-passer* issued by the European Union (OJ L 353, 28.12.2013, p. 26).

- (2) 'ECB applicant' means: (a) a member of staff of the ECB as defined in Article 1 of the Conditions of Employment; (b) a short-term contract employee of the ECB as defined in Article 1 of the Conditions of Short-Term Employment; and (c) a respective family member of such member of staff or short-term contract employee.

Article 2

Delegation and sub-delegation

1. The President hereby delegates to the Chief Services Officer (CSO) the power to issue Union *laissez-passer* to ECB applicants.
2. The President hereby authorises the CSO to sub-delegate to the Director-General Corporate Services and, in the case of his or her unavailability, to the Director Administration the power to issue Union *laissez-passer* to ECB applicants.
3. A decision on the issuing of a Union *laissez-passer* to an ECB applicant shall be adopted on a delegated or sub-delegated basis only if the criteria for doing so set out in Article 3 are fulfilled.
4. Directorate-General Corporate Services shall inform the President annually of the decisions adopted on the basis of the delegation provided for in this Article.

Article 3

Criteria for the adoption of Union *laissez-passer* decisions on a delegated or sub-delegated basis

1. A decision on the issuing of a Union *laissez-passer* to an ECB applicant shall only be taken on a delegated or sub-delegated basis where the issuing of the Union *laissez-passer* is justified as being in the interest of the service for a good business reason, in particular frequent business travel, a regular workplace outside Frankfurt am Main or in the case of external mobility.
2. The issue of a Union *laissez-passer* to a family member of a staff member of the ECB or of a short-term contract employee of the ECB shall only be possible in exceptional circumstances and solely if it is in the interest of the Union. In the case of a long stay outside the Union, including long-term posting, the Union *laissez-passer* shall be granted for the sole purpose of the safe and correct running of the service, when exceptional circumstances and the impossibility to use national passports or travel documents justify it, in particular if it is required for the purpose of travel and proper notification and residency in a third country. The duration of validity of the Union *laissez-passer* held by a family member shall never exceed the duration of the validity of the Union *laissez-passer* held by the staff member or short-term contract employee.

Article 4

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, 10 December 2021.

The President of the ECB

Christine LAGARDE

GUIDELINES

GUIDELINE (EU) 2021/2322 OF THE EUROPEAN CENTRAL BANK

of 17 December 2021

amending Guideline (EU) 2015/280 on the establishment of the Eurosystem Production and Procurement System (ECB/2021/56)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 128(1) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Articles 12.1 and 14.3 and Article 16 thereof,

Whereas:

- (1) Guideline (EU) 2015/280 of the European Central Bank (ECB/2014/44) ⁽¹⁾ provides for an arm's length principle which requires effective internal arrangements ensuring full separation between a public printing works and its public authority's accounts and reimbursement by a public printing works of the costs of all administrative and organisational support that it receives from its public authority. It is necessary to further specify the requirements regarding the arm's length principle to ensure that a public printing works must demonstrate that it has implemented the principle prior to taking part in a tender procedure of a tendering group national central bank (NCB).
- (2) Article 8(1)(b) of Guideline (EU) 2015/280 (ECB/2014/44) allows in-house group NCBs to establish non-institutionalised horizontal cooperation to jointly fulfil public tasks. An NCB that closes its printing works may remain in the in-house group by participating in such horizontal cooperation, provided that it fulfils the relevant requirements. As such, an NCB which closes its printing works may choose between becoming part of the tendering group within the meaning of Article 3 of Guideline (EU) 2015/280 (ECB/2014/44) or participating in horizontal cooperation. In order to facilitate the transition for NCBs that close their printing works, these NCBs should be permitted to move between the two available options ("two-pillar model") for a transitional period of five years prior to taking a final decision. In order to ensure the equal treatment of NCBs, an in-house group NCB that has closed its printing works should also be permitted to move between the two available options during a transitional period of five years, provided that the NCB was notified of the revocation of the accreditation of its in-house printing works after 1 November 2019. The transitional period is to start retroactively from the date of this notification.
- (3) In order to facilitate participation in the cooperation between in-house group NCBs, NCBs from Member States that will join the euro area in the future shall be allowed to choose between becoming part of the tendering group within the meaning of Article 3 of Guideline (EU) 2015/280 (ECB/2014/44) or participating in horizontal cooperation.
- (4) In emergency situations, to be defined by the Governing Council, more flexibility may be granted in implementing the two-pillar model.
- (5) Therefore, Guideline (EU) 2015/280 (ECB/2014/44) should be amended accordingly,

⁽¹⁾ Guideline (EU) 2015/280 of the European Central Bank of 13 November 2014 on the establishment of the Eurosystem Production and Procurement System (ECB/2014/44) (OJ L 47, 20.2.2015, p. 29).

HAS ADOPTED THIS GUIDELINE:

Article 1

Amendments

Guideline (EU) 2015/280 (ECB/2014/44) is amended as follows:

(1) in Article 1, point (1) is replaced by the following:

'(1) "arm's length principle" means effective internal arrangements ensuring full separation between a public printing works and its public authority's accounts and reimbursement by a public printing works of the costs of all administrative and organisational support that it receives from its public authority;'

(2) in Article 4, paragraph 3 is replaced by the following:

'3. Tendering group NCBs shall state in tender documentation that in order to be eligible for any tender, public printing works must have implemented the arm's length principle prior to taking part in the tender. In order to ensure fair competition when public printing works are responding to a call for tenders, this eligibility criterion shall require that:

- (a) euro banknote printing activities are fully separated financially from the public printing works' other activities;
- (b) no direct or indirect state aid is provided to the public printing works that is in any way incompatible with the Treaty;
- (c) the public printing works are responsible for implementing an appropriate organisational structure and cost accounting system that ensures clear cost allocation and full financial separation between euro banknote printing activities and other activities;
- (d) all costs for the production of euro banknotes, including costs incurred for administrative and organisational support for the production of euro banknotes are allocated to the public printing works;
- (e) the allocation of the costs incurred must be traceable and consistently applied and accompanied by supporting documentation of the cost allocation; and
- (f) the financial separation is checked and certified annually by an independent external auditor and reported to the tendering NCB, which must provide a copy of the auditor's statement for each calendar year to the ECB.'

(3) Article 6 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. Without prejudice to applicable Union and national legislation on public procurement, an NCB that closes its in-house printing works may decide to become part of the tendering group within the meaning of Article 3 or participate in horizontal cooperation on the basis of a cooperation agreement within the meaning of Article 8.

For a transitional period of five years starting from the date the in-house group NCB is notified of the revocation of the accreditation of its in-house printing works, the NCB that closes its printing works can switch between participating in either the in-house group or the tendering group before making a final decision, provided that the respective legal requirements are fulfilled.

The second subparagraph shall apply also in the case of an NCB that has already closed its printing works, provided that the NCB was notified of the revocation of the accreditation of its in-house printing works after 1 November 2019. The transitional period shall start retroactively from the date of this notification.'

(b) the following paragraphs 4 and 5 are added:

'4. Without prejudice to applicable Union and national legislation on public procurement, an NCB from a Member State that will join the euro area in the future may choose between becoming part of the tendering group within the meaning of Article 3 or participating in horizontal cooperation on the basis of a cooperation agreement within the meaning of Article 8, provided that a cooperation agreement within the meaning of Article 8(2)(b) is in place as of the first euro banknote allocation.

5. Without prejudice to the applicable Union and national legislation on public procurement, the Governing Council may, in emergency situations and on a case-by-case basis, decide on deviations from the two-pillar model laid down in Article 6.¹.

Article 2

Taking effect

This Guideline shall take effect on the day of its notification to the national central banks of Member States whose currency is the euro.

Article 3

Addressees

This Guideline is addressed to all Eurosystem central banks.

Done at Frankfurt am Main, 17 December 2021.

For the Governing Council of the ECB
The President of the ECB
Christine LAGARDE

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

DECISION No 2/2021 OF THE PARTNERSHIP COUNCIL ESTABLISHED BY THE TRADE AND COOPERATION AGREEMENT BETWEEN THE EUROPEAN UNION AND THE EUROPEAN ATOMIC ENERGY COMMUNITY, OF THE ONE PART, AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, OF THE OTHER PART

of 21 December 2021

as regards the extension of the interim period during which the United Kingdom may derogate from the obligation to delete Passenger Name Record data of passengers after their departure from the United Kingdom [2021/2323]

THE PARTNERSHIP COUNCIL,

Having regard to the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (the 'Trade and Cooperation Agreement'), and in particular Article 552 thereof,

Whereas:

- (1) Article 552(4) provides that the United Kingdom shall delete the Passenger Name Record (hereafter: 'PNR') data of passengers after their departure from the United Kingdom unless a risk assessment indicates the need to retain such PNR data.
- (2) Article 552(11) provides that the United Kingdom may derogate from paragraph 4 of that article on a temporary basis for an interim period, pending the implementation by the United Kingdom of technical adjustments as soon as possible (hereafter 'interim period'). During this interim period, the United Kingdom competent authority shall prevent the use of the PNR data that is to be deleted by applying the additional safeguards to that PNR data listed in Article 552(11), points (a)-(d).
- (3) According to Article 552(10), this derogation applies due to the special circumstances that prevent the United Kingdom from making the technical adjustments necessary to transform the PNR processing systems which the United Kingdom operated whilst Union law applied to it into systems which would enable PNR data to be deleted in accordance with Article 552(4) (hereafter 'special circumstances').
- (4) Article 552(13) provides that where the special circumstances persist, the Partnership Council shall extend the interim period for 1 year.
- (5) The United Kingdom submitted to the Specialised Committee on Law Enforcement and Judicial Cooperation, pursuant to Article 552(12)(b), an assessment of whether the special circumstances persist, together with a description of the efforts made to transform the PNR processing systems of the United Kingdom into systems which would enable PNR data to be deleted in accordance with Article 552(4), and, pursuant to Article 552(12)(a), a report from the independent administrative body referred to in Article 552(7) and an opinion of the United Kingdom supervisory authority referred to in Article 525(3) as to whether the safeguards provided for in Article 552(11) have been applied effectively, complemented by a report from the United Kingdom supervisory authority received on 30 November 2021.
- (6) The Specialised Committee on Law Enforcement and Judicial Cooperation considered the assessment and the report on 19 October 2021 pursuant to Article 552(13).
- (7) The Parties conclude that the special circumstances persist,

HAS ADOPTED THIS DECISION:

Article 1

The interim period during which the United Kingdom may derogate from the obligation in Article 552(4) of the Trade and Cooperation Agreement is extended until 31 December 2022.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels and London, 21 December 2021

For the Partnership Council

The Co-chairs

Maroš ŠEFČOVIČ

Elizabeth TRUSS

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