

DECISION OF THE EUROPEAN CENTRAL BANK

of 20 October 2020

amending the European Central Bank Staff Rules as regards the introduction of a whistleblowing tool and enhancements to the whistleblower protection

(ECB/2020/NP37)

THE EXECUTIVE BOARD OF THE EUROPEAN CENTRAL BANK,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 36.1 thereof,

Having regard to Decision ECB/2004/2 of the European Central Bank of 19 February 2004 adopting the Rules of Procedure of the European Central Bank¹, and in particular Article 21.3 thereof,

Having regard to the Conditions of Employment for Staff of the European Central Bank, and in particular Article 3 thereof,

Having regard to the opinion of the Staff Committee,

Whereas:

- (1) A clear whistleblowing policy should enhance the European Central Bank's (ECB's) good governance framework. It should reinforce high standards of behaviour and strengthen the ECB's accountability by incentivising persons involved in the ECB's activities to report information on possible breaches and encouraging a culture of addressing wrongdoing.
- (2) To be effective, the whistleblowing policy should provide for a user-friendly and anonymous reporting mechanism in addition to already existing channels for reporting of breaches and illegal activities by persons working for the ECB, as laid down in Decision (EU) 2016/456 of the European Central Bank (ECB/2016/3)², Administrative Circular 01/2006 on internal administrative inquiries³

¹ OJ L 80, 18.3.2004, p. 33.

² Decision (EU) 2016/456 of the European Central Bank of 4 March 2016 concerning the terms and conditions for European Anti-Fraud Office investigations of the European Central Bank, in relation to the prevention of fraud, corruption and any other illegal activities affecting the financial interests of the Union (ECB/2016/3) (OJ L 79, 30.3.2016, p. 34).

and Article 0.5 of the Staff Rules on dignity at work, as well as thorough assessment and follow-up. The assessment and follow-up on the reports submitted through the new reporting tool should be entrusted to a designated competent authority. Except in cases when the reports concern specific categories of persons, the responsibility for whistleblowing should be entrusted to one single authority.

- (3) Furthermore, it is essential to ensure that the whistleblowing policy protects the identity of whistleblowers and witnesses and shields them against retaliation. Whistleblowers should enjoy protection if they have reasonable grounds to believe, in the light of the circumstances and the information available to them at the time of the reporting, that the information reported by them is true and relevant. To deter malicious, frivolous or abusive reporting, whistleblowers should not enjoy protection for deliberately or knowingly reporting false or misleading information, information that is at the time of the reporting available in the public domain, unsubstantiated rumours or hearsay. Whistleblower protection should not be lost for reporting inaccurate information by honest mistake.
- (4) It is appropriate to enable a special appeal against decisions taken by the President in application of those rules in order to ensure that such decisions can be reviewed by the Executive Board.
- (5) Therefore, the European Central Bank Staff Rules (the 'Staff Rules') should be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Amendments to the Staff Rules

The Staff Rules are amended as follows:

1. The following Article 0.4bis is inserted in the Staff Rules:

0.4bis Whistleblowing tool and whistleblower protection

0.4bis.1 Definitions

For the purpose of this Article, the following definitions apply:

- (a) "breach" means any illegal activity, including fraud or corruption, affecting the Union's financial interests, or any conduct relating to the discharge of professional duties, by any person involved in the ECB's activities, which constitutes a failure to comply with rules and regulations applicable to them;

³ Adopted on 21 March 2006. Certain powers under Administrative Circular 01/2006 have been delegated to the Chief Services Officer under Decision ECB/2016/NP4 of the European Central Bank of 12 January 2016 delegating certain powers to the Chief Services Officer in relation to election rules for elected committees, internal administrative inquiries, rules on secondment of members of staff for external work experience, Additional Salary Advancements and promotions.

- (b) “identity” means any information that identifies or makes identifiable a natural person or that may result in direct or indirect identification of a natural person, in particular by reference to identifiers referred to in point (1) of Article 3 of Regulation (EU) 2018/1725 of the European Parliament and of the Council(*);
- (c) “information on breaches” means information, including reasonable suspicions, about possible breaches or about attempts to conceal such breaches;
- (d) “person involved in the ECB’s activities”, means a member of staff, a short-term contract employee, a graduate programme participant, a trainee, or one of the high-level ECB officials;
- (e) “high-level ECB officials”, means the officials referred to in Articles 1.1, 1.2 and 1.4 of the Code of conduct for high-level European Central Bank Officials(**);
- (f) “whistleblower” means a person involved in the ECB’s activities who reports information on breaches, through any of the reporting channels provided for in Article 0.4bis.2, in Article 0.5, in Decision (EU) 2016/456 of the European Central Bank (ECB/2016/3)(***), or in Administrative Circular 01/2006 on internal administrative inquiries;
- (g) “witness” means a person involved in the ECB’s activities, other than the whistleblower, who is required to cooperate in the context of an internal assessment of a possible breach, including by giving testimony pursuant to Administrative Circular 01/2006;
- (h) “person concerned” means a person involved in the ECB’s activities who is referred to in the report as a person to whom the breach is attributed or with whom that person is associated;
- (i) “retaliation” means any direct or indirect act or omission which occurs in a work-related context, is prompted by the reporting of information on breaches through any of the reporting channels provided for in Article 0.4bis.2, in Article 0.5, in Decision (EU) 2016/456 (ECB/2016/3), or in Administrative Circular 01/2006, or is prompted by any witness statement in relation to such reporting, and which causes or may cause unjustified detriment to the whistleblower or the witness. This should be understood as including threats of retaliation and attempts of retaliation;
- (j) “competent authority” means the authority designated to assess reports of information on breaches made through the reporting channel provided for in Article 0.4bis.2 and give feedback to the whistleblower, and/or designated to follow up on such reports.

0.4bis.2 Whistleblowing tool

0.4bis.2.1 Without prejudice to the provisions on the reporting of possible illegal activities in Decision (EU) 2016/456 (ECB/2016/3), of possible breaches related to dignity at work in Article 0.5 and of possible breaches of professional duties in Administrative Circular 01/2006, members of staff may report information on breaches through the internal reporting platform set up for this purpose by the ECB (“the whistleblowing tool”).

0.4bis.2.2 Members of staff may use the whistleblowing tool as an alternative reporting channel to discharge their obligation to report under Decision (EU) 2016/456 (ECB/2016/3) or to report under Administrative Circular 01/2006.

0.4bis.3 Assessment of and follow up on information on breaches reported through the whistleblowing tool

0.4bis.3.1 For reports of information on breaches received through the whistleblowing tool, the competent authority shall be:

- (a) the Director Internal Audit, except for reports falling under (b) or (c);
- (b) the President, where the person concerned, or any of the persons concerned, is the Director Internal Audit;
- (c) the competent authority designated by the Governing Council, where the person concerned, or any of the persons concerned, is one of the high-level ECB officials.

0.4bis.3.2 Reports of information on breaches received through the whistleblowing tool that fall within the scope of Decision (EU) 2016/456 (ECB/2016/3) shall be followed up in accordance with that Decision.

0.4bis.3.3 Reports of information on breaches received through the whistleblowing tool that do not fall within the scope of Decision (EU) 2016/456 (ECB/2016/3) shall be followed up in accordance with Administrative Circular 01/2006.

Notwithstanding the first paragraph, the procedure for assessment and follow-up on information on breaches reported through the whistleblowing tool where the person concerned, or any of the persons concerned, is one of the high-level ECB officials is set out in a specific decision of the Governing Council.

0.4bis.4 Whistleblower protection

0.4bis.4.1 The ECB shall protect whistleblowers by protecting their identity and protecting them against retaliation.

0.4bis.4.2 Whistleblowers shall qualify for protection under this Article provided that they are considered pursuant to Article 0.4bis.7.4 to have had reasonable grounds to believe, in light of the circumstances and the information available to them at the time of their reporting, that the information on breaches reported by them was true and related to a possible breach.

In application of the first paragraph, whistleblowers shall in particular:

- (a) not benefit from any protection when the information on breaches reported consists of:
 - (i) any of the following which have been deliberately or knowingly reported: false or misleading information, information that is at the time of the reporting available in the public domain, unsubstantiated rumours or hearsay; or
 - (ii) disagreement(s) with legitimate managerial or administrative decisions;
- (b) not lose protection where the information on breaches reported is inaccurate by honest mistake.

0.4bis.5 Protection of identity

0.4bis.5.1 The identity of whistleblowers and witnesses shall be protected in compliance with the principles laid down in Part 2 of the Business Rulebook.

Without prejudice to Article 7(5) of Administrative Circular 01/2006, the identity of whistleblowers who have identified themselves shall only be disclosed:

- (a) on a need to know basis, but not to the person concerned or any of the persons concerned; or
- (b) if the whistleblower has explicitly consented to the disclosure; or
- (c) in the circumstances described in Article 6(10) of Administrative Circular 01/2006, as well as where necessary for the application of the rights of defence.

0.4bis.5.2 Whistleblowers may report anonymously through the whistleblowing tool. In this case, their identity shall not be disclosed unless and until they choose to identify themselves.

0.4bis.6 Protection against retaliation

0.4bis.6.1 Retaliation against whistleblowers and witnesses constitutes a breach of professional duties and shall be subject to appropriate measures including, if necessary, disciplinary measures.

0.4bis.7 Procedure for requesting protection against retaliation

0.4bis.7.1 Whistleblowers and witnesses may submit a request for protection from retaliation to the Chief Compliance and Governance Officer together with any relevant documents or information supporting their request. The request shall be submitted within 24 months from the time of the occurrence of the act or omission alleged to be retaliation.

0.4bis.7.2 Such request shall not shield the requester from accountability for their own involvement, where applicable, in the breach that was reported by them or in respect of which they are a witness.

0.4bis.7.3 The Chief Compliance and Governance Officer shall handle such requests in strict confidence and the identity of the requester shall be protected in accordance with 0.4bis.5.1, including when the requester is a witness.

0.4bis.7.4 Upon receipt of the request for protection from retaliation, the Chief Compliance and Governance Officer shall, without undue delay:

- (a) acknowledge receipt, and
- (b) check whether the request for protection fulfils the following conditions:
 - (i) the requester is a whistleblower qualifying for protection under the conditions specified in Article 0.4bis.4.2, or a witness; and
 - (ii) the alleged detrimental act or omission has occurred; and
 - (iii) the alleged detrimental act or omission may have been prompted by the whistleblowing or by any witness statement in relation to the whistleblowing.

0.4bis.7.5 If the Chief Compliance and Governance Officer concludes that:

- (a) the request for protection does not fulfil the conditions specified in Article 0.4bis.7.4 (b), they shall inform the requester in writing accordingly;

(b) the request for protection fulfils the conditions specified in Article 0.4bis.7.4 (b), they

- (i) may recommend interim protective measures in accordance with Article 0.4bis.8;
- (ii) shall perform an assessment as to whether there is a need for protection, including, if necessary, by forwarding the matter to the competent body or business area(s) with responsibility for investigations that should then carry out the investigations in accordance with applicable rules and submit the outcome of the investigations to the Chief Compliance and Governance Officer. In this context, the ECB shall bear the burden of proof for establishing that the reported act or omission did not constitute retaliation;
- (iii) shall notify the requester in writing accordingly.

0.4bis.7.6 If the Chief Compliance and Governance Officer, after having performed the assessment referred to in Article 0.4bis.7.5(b)(ii), concludes that:

- (a) there is no need for protection, they shall inform the requester in writing accordingly;
- (b) there is a need for protection, they may recommend the following measures as a follow-up:
 - (i) after consulting the requester and in accordance with Article 0.4bis.8, measures correcting detriment suffered as a result of the retaliation (“corrective measures”) and measures protecting the requester from any further retaliation (“protective measures”); and
 - (ii) as the case may be, any appropriate measures against the retaliator including, if necessary, disciplinary measures.

0.4bis.7.7 Where the Chief Compliance and Governance Officer is of the opinion that there is a conflict of interest in reviewing a request for protection against retaliation, they shall refer the matter to the Chief Services Officer to designate who shall follow up on such request in accordance with the above procedure.

0.4bis.8 *Interim protective measures and corrective measures*

0.4bis.8.1 The Chief Compliance and Governance Officer may recommend measures that are necessary and appropriate to protect the whistleblower and the witnesses against retaliation including interim protective measures and corrective measures, subject to such measures being in line with the ECB legal framework.

0.4bis.8.2 At any point in time, the Chief Compliance and Governance Officer may recommend, with the consent of the whistleblower or witness, a monitoring of his or her workplace situation by the Directorate General Human Resources.

0.4bis.8.3 The Chief Compliance and Governance Officer may request addressees of their recommendations to report back on their implementation of the recommendations. If the

Chief Compliance and Governance Officer is not satisfied with the follow-up given to their recommendations, they may inform the President accordingly.

0.4bis.9 Reporting on whistleblowing

The ECB may report on whistleblowing in abridged or aggregated form, such that individual persons cannot be identified.

(*) 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).

(**) Code of Conduct for high-level European Central Bank Officials (2019/C 89/03) (OJ C 89, 8.3.2019, p. 2).

(***) Decision (EU) 2016/456 of the European Central Bank of 4 March 2016 concerning the terms and conditions for European Anti-Fraud Office investigations of the European Central Bank, in relation to the prevention of fraud, corruption and any other illegal activities affecting the financial interests of the Union (ECB/2016/3) (OJ L 79, 30.3.2016, p. 34).';

2. Article 8.1.6 is replaced by the following:

'8.1.6 Decisions taken by the Chief Services Officer, on behalf of the Executive Board, by the Executive Board, or by the President acting as competent authority in accordance with Article 0.4bis.3.1(b), shall be subject to a special appeals procedure. A member of staff may initiate an appeal within two months from the date on which the Chief Services Officer's decision, on behalf of the Executive Board, the Executive Board's decision, or the President's decision, was communicated to them.

The member of staff shall submit the appeal against a Chief Services Officer's decision, on behalf of the Executive Board, or against an Executive Board's decision, to the President, and against a President's decision to the Vice-President, together with any relevant documents. The request shall clearly state the reasons for challenging the decision and the relief sought.

The President, or the Vice-President, as the case may be, shall notify the Executive Board's decision to the member of staff within two months from the date on which the appeal was submitted.'

Article 2

Entry into force

This Decision shall enter into force on 28 October 2020.

Done at Frankfurt am Main, 20 October 2020.

The President of the ECB

Christine LAGARDE

[signed]

ECB-PUBLIC