

**DECISION OF THE EUROPEAN CENTRAL BANK**  
**of 14 April 2014**  
**concerning the establishment of an Administrative Board of Review and its Operating Rules**  
**(ECB/2014/16)**  
**(2014/360/EU)**

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions <sup>(1)</sup>, and in particular Article 24 thereof,

Whereas:

- (1) Pursuant to Article 24(1) of Regulation (EU) No 1024/2013, the Administrative Board of Review carries out an internal administrative review of the decisions taken by the European Central Bank (ECB) in the exercise of the powers conferred upon it under Regulation (EU) No 1024/2013 after a request for review submitted in accordance with Article 24(5).
- (2) Pursuant to Article 24(10) of Regulation (EU) No 1024/2013, the ECB will adopt the Operating Rules of the Administrative Board of Review, which will be made public.
- (3) Pursuant to Article 24(11) of Regulation (EU) No 1024/2013, the establishment of the Administrative Board of Review is without prejudice to the right to bring proceedings before the Court of Justice of the European Union in accordance with the Treaties.
- (4) A review by the Administrative Board of Review is an optional review for persons to whom a decision of the ECB under Regulation (EU) No 1024/2013 is addressed, or to whom such decision is of direct and individual concern, before bringing proceedings before the Court of Justice,

HAS ADOPTED THIS DECISION:

PRELIMINARY CHAPTER

*Article 1*

**Supplementary nature**

This Decision shall supplement the Rules of Procedure of the European Central Bank. The terms used in this Decision shall have the same meaning as the terms defined in the Rules of Procedure of the European Central Bank.

CHAPTER I

**THE ADMINISTRATIVE BOARD OF REVIEW**

*Article 2*

**Establishment**

The Administrative Board of Review (hereinafter the 'Administrative Board') is hereby established.

*Article 3*

**Composition**

1. The Administrative Board shall be composed of five members who shall be replaced by two alternates under the conditions laid down in paragraph 3.

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<sup>(1)</sup> OJ L 287, 29.10.2013, p. 63.

2. The members of the Administrative Board and the two alternates shall be individuals of high repute who are Member State nationals and have a proven record of relevant knowledge and professional experience, including supervisory experience, to a sufficiently high level in the fields of banking or other financial services. They may not be current staff members of the ECB, of national competent authorities or other national or Union institutions, bodies, offices and agencies that are involved in the tasks carried out by the ECB under Regulation (EU) No 1024/2013.

3. The two alternates shall temporarily replace the members of the Administrative Board in case of temporary incapacity, death, resignation or removal from office or if, in the context of a particular request for review, there are justified reasons for serious concern as to the existence of a conflict of interest. A conflict of interest arises where a member of the Administrative Board has a private or personal interest which may influence, or appear to influence, the impartial and objective performance of their duties.

#### Article 4

### Appointment

1. The members of the Administrative Board and the two alternates shall be appointed by the Governing Council ensuring, to the extent possible, an appropriate geographical and gender balance across the Member States.

2. Following a public call for expressions of interest published in the *Official Journal of the European Union*, the Executive Board, after hearing the Supervisory Board, shall submit nominations for the members of the Administrative Board and the two alternates to the Governing Council no later than one month before the start of the Governing Council meeting at which the decision regarding the appointment shall be adopted.

3. The term of office of the members of the Administrative Board and of the two alternates shall be five years, renewable once.

4. The members of the Administrative Board and the two alternates shall act independently and in the public interest. They shall not be subject to any instructions and shall make a public declaration of commitments and a public declaration of interests indicating any direct or indirect interest which might be considered prejudicial to their independence or the absence of any such interest.

5. The terms and conditions of appointment of the members of the Administrative Board and the two alternates shall be laid down by the Governing Council.

#### Article 5

### Chair and Vice-Chair

1. The Administrative Board shall designate its Chair and its Vice-Chair.

2. The Chair shall ensure the functioning of the Administrative Board, the efficient examination of reviews and adherence to the Operating Rules.

3. The Vice-Chair shall assist the Chair in the performance of their duties and shall take their place when the latter is prevented from acting or at the request of the Chair, to ensure the functioning of the Administrative Board.

#### Article 6

### Secretary of the Administrative Board

1. The Secretary of the Supervisory Board shall act as Secretary of the Administrative Board (hereinafter the 'Secretary').

2. The Secretary shall be responsible for preparing the efficient examination of reviews, organising the Administrative Board's pre-hearings and hearings, drafting the respective proceedings, maintaining a register of reviews and otherwise providing assistance in relation to the reviews.

3. The ECB shall provide the Administrative Board with appropriate support including legal expertise to assist in the assessment of the exercise of the powers of the ECB under Regulation (EU) No 1024/2013.

## CHAPTER II

**REQUEST FOR REVIEW***Article 7***Notice of review**

1. Any natural or legal person to whom a decision of the ECB under Regulation (EU) No 1024/2013 is addressed, or to whom such decision is of direct and individual concern, who wishes to request an internal administrative review (hereinafter the 'applicant') shall do so by filing a written notice of review with the Secretary, identifying the contested decision. The notice of review shall be submitted in one of the official languages of the Union.
2. The Secretary shall confirm receipt of the notice of review to the applicant without delay.
3. The notice of review shall be filed within one month of the notification of the decision to the applicant or, in the absence of such notification, of the day on which it came to the applicant's knowledge.
4. The contested decision shall be annexed to the notice of review, which shall: (a) state the grounds on which it is based; (b) if an application is made for the review to have suspensory effect, state the grounds of such application; (c) have attached to it copies of any documents on which the applicant intends to rely; and (d) if the notice of review exceeds 10 pages, include a summary of items (a) to (c).
5. The notice of review shall clearly indicate the applicant's full contact details so that the Secretary may send communications to the applicant or its representative as the case may be. The Secretary shall send a confirmation of receipt to the applicant stating whether the notice of review is complete.
6. The applicant may at any time withdraw a notice of review by giving notice of withdrawal to the Secretary.
7. Once filed with the Secretary, the notice of review, together with the attached documents, shall be transmitted internally without delay to allow the ECB to be represented in the proceedings.

*Article 8***Rapporteur**

On receipt of a notice of review, the Chair shall designate a rapporteur for the review from the members of the Administrative Board, including the Chair. In designating the rapporteur, the Chair shall take into account the specific expertise of each member of the Administrative Board.

*Article 9***Suspensory effect**

1. Submission of the notice of review shall not have suspensory effect on the application of the contested decision, subject to paragraph 2.
2. Without prejudice to paragraph 1, the Governing Council, upon a proposal by the Administrative Board, may decide to suspend the application of the contested decision provided the request for review is admissible and not obviously unfounded and it considers that the immediate application of the contested decision may cause irreparable damage. The Governing Council shall take such decision to suspend the application of the contested decision after having heard the opinion of the Supervisory Board as appropriate.
3. The procedures laid down in these Operating Rules, including those set out in Articles 12 and 14 in respect of directions and hearings, shall apply as necessary to the determination of any question of suspension.

## CHAPTER III

**REVIEW***Article 10***Scope of the review of the Administrative Board**

1. In accordance with Article 24(1) of Regulation (EU) No 1024/2013, the scope of the internal administrative review shall cover the relevant decision's procedural and substantive conformity with Regulation (EU) No 1024/2013.
2. The Administrative Board's review shall be limited to examination of the grounds relied on by the applicant as set out in the notice of review.

*Article 11***Admissibility of the request for review**

1. The Administrative Board shall determine whether and to what extent the request for review is admissible before examining whether it is legally founded. If the Administrative Board deems the request for review inadmissible wholly or in part, this assessment shall be recorded in the Administrative Board's opinion pursuant to Article 17.
2. A notice of review filed in respect of a new decision of the Governing Council as referred to in Article 24(7) of Regulation (EU) No 1024/2013 shall not be admissible.

*Article 12***Directions**

The Chair, on behalf of the Administrative Board, may give directions for the efficient conduct of the review, including directions to produce documents or provide information. The Secretary shall send such directions to the relevant parties. The Chair may consult with the other members for such purposes.

*Article 13***Failure to comply**

1. Where the applicant has, without reasonable justification, failed to comply with a direction of the Administrative Board or a provision of these Operating Rules, the Administrative Board may order it to pay any costs of the proceedings arising from the delay.
2. Before issuing an order in accordance with paragraph 1, the Administrative Board shall give notice to the applicant, to provide it with the opportunity to make representations against the issuance of such an order.

*Article 14***Hearing**

1. The Administrative Board may call for an oral hearing where it considers this necessary for the fair evaluation of the review. Both the applicant and the ECB shall be requested to make oral representations at such hearing.
2. The Chair shall give directions as to the order, form and date of the hearing.
3. The hearing shall take place at the ECB's premises. The Secretary shall be present. The hearing shall not be open to third parties.
4. In exceptional cases, the Chair may adjourn the hearing on the application of the applicant or of the ECB, or on its own initiative.
5. Where the party has been notified of an oral hearing and fails to appear, the Administrative Board may proceed in their absence.

*Article 15***Evidence**

1. The applicant may request the Administrative Board's permission to adduce, in the form of a written statement, witness or expert evidence.
2. The applicant may request the Administrative Board's permission to call a witness or expert who has given a written statement to give oral evidence at the hearing. Also the ECB may request the Administrative Board's permission to call a witness or expert to give oral evidence at the hearing.
3. Permission shall only be given if the Administrative Board considers it necessary for the just determination of the review.
4. Witnesses or experts shall be examined by the Administrative Board. Such evidence shall be served within the time permitted. The applicant shall have the right to cross-examine witnesses or experts called on by the ECB where this is necessary for the just determination of the review.

## CHAPTER IV

**DECISION-MAKING PROCESS***Article 16***Opinion on the review**

1. The Administrative Board shall, within a time period appropriate to the urgency of the matter and not later than two months from the date of receipt of the notice of review, adopt an opinion on the review.
2. The opinion shall propose whether the initial decision should be either abrogated, replaced with a decision of identical content or replaced with an amended one. In the latter case, the opinion shall contain proposals for the necessary amendments.
3. The opinion shall be adopted by a majority of at least three members of the Administrative Board.
4. The opinion shall be in writing and contain reasons, and shall be sent to the Supervisory Board without delay.
5. The opinion shall not be binding on the Supervisory Board or the Governing Council.

*Article 17***Preparation of a new draft decision**

1. The Supervisory Board shall assess the Administrative Board's opinion and propose a new draft decision to the Governing Council. The Supervisory Board's assessment shall not be limited to examination of the grounds relied upon by the applicant as set forth in the notice of review, but may also take other elements into account in its proposal for a new draft decision.
2. The Supervisory Board's new draft decision replacing the initial decision with a decision of identical content shall be submitted to the Governing Council within 10 working days of receipt of the Administrative Board's opinion. A new draft decision by the Supervisory Board abrogating or amending the initial decision shall be submitted to the Governing Council within 20 working days of receipt of the Administrative Board's opinion.

*Article 18***Notification**

The Administrative Board's opinion, the new draft decision submitted by the Supervisory Board and the new decision adopted by the Governing Council shall be notified to the parties by the Secretary of the Governing Council including the relevant reasoning.

## CHAPTER V

**RECOURSE TO THE COURT***Article 19***Recourse to the Court of Justice**

This Decision is without prejudice to the right to bring proceedings before the Court of Justice in accordance with the Treaties.

## CHAPTER VI

**GENERAL PROVISIONS***Article 20***Access to files**

1. The rights of defence of the applicant shall be fully respected. For this purpose, and after the applicant has filed a written notice of review, the applicant shall be entitled to have access to the ECB's file, subject to the legitimate interest of legal and natural persons other than the applicant, in the protection of their business secrets.
2. The files consist of all documents obtained, produced or assembled by the ECB during the ECB supervisory procedure, irrespective of the storage medium.
3. The right of access to the file shall not extend to confidential information.
4. For the purposes of this Article, confidential information may include internal documents of the ECB or a national competent authority and correspondence between the ECB and a national competent authority or between national competent authorities.
5. Nothing in this Article shall prevent the ECB from disclosing and using information necessary to prove an infringement.
6. The ECB may determine that access to a file shall be granted in one or more of the following ways, taking due account of the technical capabilities of the parties: (a) by means of CD-ROM(s) or any other electronic data storage device including any that may become available in future; (b) through copies of the accessible file in paper form sent to them by mail; (c) by inviting them to examine the accessible file in the offices of the ECB.

*Article 21***Costs orders**

1. The costs of the review shall comprise the reasonable costs incurred for the review.
2. After notification of the new decision by the Governing Council or after the applicant has withdrawn the notice of review, the Supervisory Board shall propose the proportion of costs to be borne by the applicant. The applicant shall be entitled to make representations in this regard.
3. Any disproportionate costs incurred by the applicant in submitting written or oral evidence and in respect of legal representation shall be borne by the applicant.
4. No cost shall be borne by the applicant in cases in which the Governing Council abrogates or amends the initial decision as a consequence of the notice of review. This shall not apply to any disproportionate costs incurred by the applicant in submitting written or oral evidence and in respect of legal representation, which shall be borne by the applicant.
5. The Governing Council shall decide on the apportionment of costs in accordance with the procedure laid down in Article 13g.2 of the Rules of Procedure of the European Central Bank.
6. Costs, if ordered, must be paid within 20 working days.

*Article 22***Confidentiality and professional secrecy**

1. The members of the Administrative Board and the alternates shall be subject to the professional secrecy requirements laid down in Article 37 of the Statute of the European System of Central Banks and of the European Central Bank even after their duties have ceased.
2. The proceedings of the Administrative Board shall be confidential unless the Governing Council authorises the President of the ECB to make the outcome of such proceedings public.
3. Documents drawn up or held by the Administrative Board shall be ECB documents and shall therefore be classified and handled in accordance with Article 23.3 of the Rules of Procedure of the European Central Bank <sup>(1)</sup>.

*Article 23***Supplementary rules**

1. The Administrative Board may adopt supplementary rules to regulate its proceedings and activities.
2. The Administrative Board may issue forms and guides.
3. Supplementary rules, forms and guides adopted by the Administrative Board shall be reported to the Supervisory Board and published on the ECB's website.

*Article 24***Entry into force**

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

Done at Frankfurt am Main, 14 April 2014.

*The President of the ECB*  
Mario DRAGHI

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<sup>(1)</sup> OJ L 80, 18.3.2004, p. 33.