

**DECISION (EU) 2019/1378 OF THE EUROPEAN CENTRAL BANK****of 9 August 2019****amending Decision ECB/2014/16 concerning the establishment of an Administrative Board of Review and its Operating Rules (ECB/2019/27)**

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

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

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) In the light of the experience gained since the establishment of the Administrative Board of Review, it is necessary to clarify certain aspects of its Operating Rules, which are laid down in Decision ECB/2014/16 <sup>(2)</sup>, and where appropriate to adapt them, in particular with respect to the role of alternates.
- (2) The European Central Bank (ECB) has developed a methodology for the apportionment of costs incurred by the applicants and by the ECB in the context of the internal administrative review of decisions of the ECB under Regulation (EU) No 1024/2013 by the Administrative Board of Review. This methodology should be included in the Operating Rules.
- (3) Therefore, Decision ECB/2014/16 should be amended accordingly,

HAS ADOPTED THIS DECISION:

*Article 1*

**Amendments**

Decision ECB/2014/16 is amended as follows:

1. Article 3 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. The Administrative Board shall be composed of five members who shall be replaced by two alternates under the conditions laid down in paragraphs 3 and 4.’;

(b) paragraph 3 is replaced by the following:

‘3. An alternate shall temporarily replace a member of the Administrative Board in case of temporary incapacity. In the context of a particular request for review, an alternate shall temporarily replace a member of the Administrative Board in the following cases:

(a) in any situation which may raise conflict of interest concerns as defined in Article 11.1 of the Code of Conduct for high-level European Central Bank Officials <sup>(\*)</sup>;

(b) the member is unavailable for justified reasons.

<sup>(\*)</sup> OJ C 89, 8.3.2019, p. 2.’;

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

‘4. An alternate shall permanently replace a member of the Administrative Board in case of permanent incapacity, death, resignation or removal from office. In this case, they shall cease to be an alternate and they shall be designated as members of the Administrative Board by the Governing Council. An alternate shall be appointed in their place, in accordance with the procedure laid down under Article 4.

5. The alternates shall fully participate in the review proceedings, either temporarily replacing the members of the Administrative Board or as observers.’;

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

<sup>(2)</sup> Decision ECB/2014/16 of 14 April 2014 concerning the establishment of an Administrative Board of Review and its Operating Rules (OJ L 175, 14.6.2014, p. 47).

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

‘3. The term of office of the members of the Administrative Board and of the two alternates shall be five years, renewable once. In the event that an alternate permanently replaces a member of the Administrative Board under the conditions laid down in Article 3(4), such replacement shall not be considered a new appointment or renewal, and their mandate shall be considered to have started at the date of their appointment as an alternate.’;

3. in Article 7, paragraph 5 is replaced by the following:

‘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 promptly send a confirmation of receipt to the applicant stating whether the notice of review is complete.’;

4. in Article 16, paragraph 1 is replaced by the following:

‘1. The Administrative Board shall adopt an opinion on the review within a time period appropriate to the urgency of the matter and not later than two months from the date of receipt of the complete notice of review, containing all the documentation required to be submitted in accordance with Article 7(4), the receipt of which is confirmed in accordance with Article 7(5).’;

5. in Article 17, paragraph 2 is replaced by the following:

‘2. The Supervisory Board’s new draft decision replacing the initial decision with a decision of identical content or abrogating or amending the initial decision shall be submitted to the Governing Council within 30 working days following receipt of the Administrative Board’s opinion.’;

6. Article 21 is amended as follows:

(a) paragraphs 3 and 4 are deleted;

(b) paragraph 5 is replaced by the following:

‘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, on the basis of the methodology for the apportionment of costs set out in the Annex to this Decision.’;

7. the text set out in the Annex to this Decision is added as an Annex to Decision ECB/2014/16.

#### *Article 2*

#### **Final provision**

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, 9 August 2019.

*The President of the ECB*  
Mario DRAGHI

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ANNEX

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**Methodology for the apportionment of the costs of the review incurred by the applicant and by the European Central Bank in the context of a review by the Administrative Board**

In cases in which the Governing Council abrogates the initial decision or amends its operative part as a consequence of the notice of review, the ECB will reimburse the costs incurred by the applicant in the context of the review, with the exclusion of any disproportionate costs incurred by the applicant in submitting written or oral evidence and in respect of legal representation, which will be borne by the applicant. In any case, the reimbursement by the ECB of costs incurred by the applicant shall not exceed EUR 50 000 for each individual review by the Administrative Board.

In cases in which the Governing Council replaces the initial decision with a decision of identical content or amends only the non-operative part (\*) of the initial decision as a consequence of the notice of review, the applicant will contribute to the costs incurred by ECB in the context of the review. Natural persons must pay a lump sum of EUR 500. Legal persons must pay a lump sum of EUR 5 000. The payment of this lump sum remains without prejudice to the application of Article 13 of this Decision.

In cases in which the applicant withdraws a notice of review pursuant to Article 7(6) of this Decision, the applicant and the ECB will bear their own costs, if any.

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(\*) "Non-operative part" refers to any part of the decision which provides grounds and reasoning of the ECB decision, irrespective of the wording used in the decision itself to indicate such part.'

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