

DECISION (EU) 2023/864 OF THE EUROPEAN CENTRAL BANK**of 13 April 2023****amending Decision ECB/2014/16 concerning the establishment of an Administrative Board of Review and its Operating Rules (ECB/2023/11)**

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 ⁽¹⁾, 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 and adapt certain aspects of its Operating Rules, which are laid down in Decision ECB/2014/16 of the European Central Bank ⁽²⁾, as amended by Decision (EU) 2019/1378 of the European Central Bank (ECB/2019/27) ⁽³⁾, in particular with respect to the role of alternates, the scope of the review by the Administrative Board of Review, the assessment of the admissibility of the request for review by the Administrative Board of Review, the 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 and certain organisational and practical matters.
- (2) 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) in Article 3, paragraph 4 is replaced by the following:

‘4. In case of permanent incapacity, death, resignation or removal from office of a member of the Administrative Board, the Governing Council shall (a) designate one alternate as a member of the Administrative Board and appoint an alternate in that alternate’s place, or (b) appoint a new member of the Administrative Board. Any appointment made pursuant to this paragraph shall be made in accordance with the procedure laid down in Article 4(2).’;
- (2) in Article 4, paragraph 2 is replaced by the following:

‘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 for appointment.’;
- (3) in Article 7, paragraph 4 is replaced by the following:

‘4. The notice of review 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; and (c) have attached to it copies of any documents on which the applicant intends to rely. The notice of review should have attached to it the contested decision and, if the notice of review exceeds 10 pages, it should include a summary of the grounds and documents specified in points (a) to (c).’;

⁽¹⁾ OJ L 287, 29.10.2013, p. 63.

⁽²⁾ Decision ECB/2014/16 of the European Central Bank 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).

⁽³⁾ 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) (OJ L 224, 28.8.2019, p. 9).

- (4) 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 send a confirmation of receipt to the applicant within three working days stating whether the notice of review is complete. Where the notice of review is incomplete, the Secretary shall set a time limit of a maximum of five working days within which the applicant shall complete the notice of review.

Where, in the view of the Administrative Board, the applicant fails to complete the notice of review within the set time limit, the Secretary shall notify the applicant within ten working days from the expiry of that set time limit that the administrative review procedure could not be initiated because the applicant did not complete the notice of review. The notification shall state that under Article 24(11) of Regulation (EU) No 1024/2013 the administrative review procedure is without prejudice to the right to bring proceedings before the Court of Justice in accordance with the Treaties. Where the administrative review procedure is not initiated due to the absence of a complete notice of review, an opinion on the review shall not be adopted.;

- (5) in Article 10, paragraph 2 is replaced by the following:

'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 and to examination of breaches of essential procedural requirements.;

- (6) Article 11 is replaced by the following:

'Article 11

Admissibility of the request for review

1. Before examining the procedural and substantive conformity of an ECB decision with Regulation (EU) No 1024/2013, the Administrative Board shall determine the admissibility of the request for review.

2. If the Administrative Board deems the request for review manifestly inadmissible, it may declare the request for review inadmissible within 10 working days from the receipt of the complete notice of review. The Administrative Board shall state the reasons on which that assessment is based.

3. Where the Administrative Board declares that the request for review is inadmissible in accordance with paragraph 2, the Secretary shall notify the applicant immediately. The notification shall state that under Article 24(11) of Regulation (EU) No 1024/2013 the administrative review procedure is without prejudice to the right to bring proceedings before the Court of Justice in accordance with the Treaties. Where the request for review is declared inadmissible in accordance with paragraph 2, an opinion on the review shall not be adopted.

4. Where paragraph 2 does not apply, the Administrative Board shall rule on the admissibility of the request for review in the opinion on the review it adopts pursuant to Article 16. In this case, the Secretary shall notify the applicant within 10 working days from the receipt of the complete notice of review that the Administrative Board shall rule on the admissibility of the request for review in the opinion on the review.

5. 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.;

- (7) in Article 14, paragraph 3 is replaced by the following:

'3. The hearing shall take place at the ECB's premises or via videoconference. The Secretary shall be present. The hearing shall not be open to third parties.;

- (8) in Article 17, paragraph 1 is replaced by the following:

'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. Where the internal administrative review is not initiated due to the absence of a

complete notice of review in accordance with Article 7(4) or where the Administrative Board declares the request for review inadmissible in accordance with Article 11(2), the Supervisory Board shall not propose a new draft decision to the Governing Council.;

(9) in Article 21, paragraph 2 is replaced by the following:

'2. After notification of the new decision by the Governing Council or after the applicant has withdrawn the notice of review or after the Administrative Board has declared the request for review inadmissible, 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.;

(10) the Annex is replaced by the Annex to this Decision.

Article 2

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, 13 April 2023.

The President of the ECB
Christine LAGARDE

ANNEX

The Annex to Decision ECB/2014/16 is replaced by the following:

'ANNEX

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, and in cases in which the Administrative Board declares a request for review inadmissible, 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, as well as in cases where this is justified in view of the specific circumstances, the applicant and the ECB will bear their own costs, if any.'
