

GUIDELINES

GUIDELINE (EU) 2021/2256 OF THE EUROPEAN CENTRAL BANK

of 2 November 2021

laying down the principles of the Ethics Framework for the Single Supervisory Mechanism (ECB/2021/50)

(recast)

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 ⁽¹⁾, and in particular Article 6(1) in conjunction with Article 6(7) thereof,

Whereas:

- (1) A number of amendments are to be made to Guideline (EU) 2015/856 of the European Central Bank (ECB/2015/12) ⁽²⁾. In the interests of clarity, Guideline (EU) 2015/856 (ECB/2015/12) should be recast.
- (2) In order to perform the tasks entrusted to the European Central Bank (ECB) and the national competent authorities (NCAs) of those Member States participating in the Single Supervisory Mechanism (hereinafter the 'SSM') pursuant to the Regulation (EU) No 1024/2013, the ECB and the NCAs adhere to the principles of independence, accountability, transparency and maintain the highest standards of professional ethics and integrity including no tolerance towards inappropriate behaviour and harassment. A governance framework safeguarding these principles and standards is a key element in ensuring the credibility of the SSM and is essential to securing the trust of supervised entities and Union citizens.
- (3) With this in mind, the Governing Council in 2015 adopted Guideline (EU) 2015/856 (ECB/2015/12), which laid down the principles of a common ethics framework for the SSM (hereinafter the 'SSM Ethics Framework') that safeguards the SSM's credibility and reputation as well as public confidence in the integrity and impartiality of the members of the bodies and the members of staff of the ECB and of the NCAs of the Member States participating in the SSM.
- (4) The Governing Council is of the view that in order to maintain the highest standards of professional ethics and integrity, the existing common minimum standards and rules aimed at preventing insider trading and the misuse of non-public SSM information, as well as at preventing and managing conflicts of interests, should be further developed. To this end, the Governing Council considers it important that the ECB and the NCAs adopt measures aimed at avoiding even any appearance of insider trading, misuse of non-public information or of possible conflicts of interest. While the ECB and the NCAs should have certain latitude in defining the most appropriate framework for such measures, it is at the same time important – in order to adequately protect the reputation of the SSM – that, a set of aligned measures, in particular as regards rules on critical private financial transactions, should apply, as a minimum, to members of staff of the ECB and the NCAs when conducting SSM tasks. Those aligned measures should also apply to members of an internal body that has administrative and/or consultative functions relating directly or indirectly to the implementation of SSM tasks carried out by the NCAs.
- (5) To further safeguard the trust of supervised entities and Union citizens that members of staff of the ECB and the NCAs, as well as members of their bodies, serve with complete professional impartiality, perceptions of conflicts of interests should be avoided. To this end, those members of staff and members of bodies who have access to market sensitive information should be required to comply with specific rules and standards when conducting private financial transactions, in particular where those transactions involve regulated entities.

⁽¹⁾ OJ L 287, 29.10.2013, p. 63.

⁽²⁾ Guideline (EU) 2015/856 of the European Central Bank of 12 March 2015 laying down the principles of an Ethics Framework for the Single Supervisory Mechanism (ECB/2015/12) (OJ L 135, 2.6.2015, p. 29).

- (6) While the SSM Ethics Framework applies solely to the performance of supervisory tasks, in order to ensure the widest possible coherence between integrity and good governance standards across national central banks (NCBs) and NCAs, the Governing Council adopted Guideline (EU) 2015/855 of the European Central Bank (ECB/2015/11) ⁽³⁾ laying down the principles of a Eurosystem Ethics Framework (hereinafter the 'Eurosystem Ethics Framework') applicable to the performance of Eurosystem tasks by NCBs.
- (7) The principles established by Guideline (EU) 2015/856 (ECB/2015/12) were supplemented by the Ethics Framework for the SSM Implementation (EFSI) practices ⁽⁴⁾ approved by the Governing Council and transposed into internal rules and practices adopted by the ECB and NCAs. These EFSI practices, including in particular Implementation practice No 4 concerning the compliance function, should be incorporated into the revised SSM Ethics Framework, in a manner which safeguards the principle of organizational autonomy of each NCA.
- (8) To ensure that the SSM Ethics Framework continues to reflect appropriate standards and best practices that take into account the state of the art in the supervisory community and amongst the Union institutions, Guideline (EU) 2015/856 (ECB/2015/12) provides for a regular review by the Governing Council. The entry into force of the Code of Conduct for high-level ECB officials ⁽⁵⁾ (hereinafter the 'Single Code'), further enhanced uniform standards of professional ethics for all members of high-level ECB bodies and their alternates. Against this background, the Governing Council considers it necessary to adapt the existing standards as provided for in the SSM Ethics Framework.
- (9) With a view to providing an interinstitutional forum for exchange on ethics and compliance matters and on issues related to the implementation of Guideline (EU) 2015/855 (ECB/2015/11) and Guideline (EU) 2015/856 (ECB/2015/12), the Governing Council established the Ethics and Compliance Officers Task Force (ECTF). In the light of the increasing significance of these matters and the resulting need to strive for more ambitious standards at the SSM level as well as to support the coherent implementation of the SSM Ethics Framework, the Governing Council has considered it appropriate to assign to the ECTF enhanced responsibilities and to transform it into a permanent Ethics and Compliance Conference (ECC). These enhanced responsibilities should enable the SSM to adequately address the challenges inherent in the dynamic nature of integrity and good governance standards.
- (10) To ensure overall coherence of these ethics frameworks, the main concepts concerning conflicts of interest, acceptance of gifts and hospitality and the prohibition on misuse of non-public information as set out in Guidelines (EU) 2015/855 (ECB/2015/11) and (EU) 2015/856 (ECB/2015/12) should be further developed and aligned with the Single Code. In particular, pre-employment vetting and post-employment restrictions should be extended beyond SSM senior members of staff who report directly to the executive level in order to effectively address concerns regarding 'revolving doors' between the banking supervisors and the private sector, in particular financial market participants.
- (11) Although the SSM Ethics Framework applies only to the performance of supervisory tasks, it is nonetheless desirable that the ECB and the NCAs apply equivalent standards to members of their bodies, their staff and others performing non-SSM related tasks.
- (12) The provisions of this Guideline are without prejudice to applicable national legislation, in particular labour legislation.
- (13) The provisions of this Guideline should be without prejudice to the Single Code and to any requirements of ethical conduct established in specific areas that meet, as a minimum, the principles of the SSM Ethics Framework,

⁽³⁾ Guideline (EU) 2015/855 of the European Central Bank of 12 March 2015 laying down the principles of a Eurosystem Ethics Framework and repealing Guideline ECB/2002/6 on minimum standards for the European Central Bank and national central banks when conducting monetary policy operations with the ECB's foreign reserves and managing the ECB's foreign reserve assets (ECB/2015/11) (OJ L 135, 2.6.2015, p. 23).

⁽⁴⁾ Ethics Framework for the SSM Implementation Practices, 12 March 2015, available on EUR-Lex.

⁽⁵⁾ Code of Conduct for high-level European Central Bank officials (OJ C 89, 8.3.2019, p. 2).

HAS ADOPTED THIS GUIDELINE:

CHAPTER I

General provisions

Article 1

Scope of application

1. This Guideline shall apply to the European Central Bank (ECB) and the national competent authorities (NCAs) in the performance of the supervisory tasks conferred on the ECB. In this regard, internal rules adopted by the ECB and the NCAs in the fulfilment of the provisions of this Guideline shall apply to their members of staff and the members of their bodies.
2. The ECB and the NCAs shall aim, to the extent legally feasible, to extend the obligations defined in implementation of the provisions of this Guideline to any persons involved in the performance of supervisory tasks who are not members of staff of the ECB and the NCAs.

Article 2

Definitions

For the purposes of this Guideline:

- (1) 'national competent authority' means a national competent authority as defined in point (2) of Article 2 of Regulation (EU) No 1024/2013. This definition is without prejudice to arrangements under national law which assign certain supervisory tasks to an NCB not designated as an NCA. A reference to an NCA in this Guideline, in such a case, also applies to the NCB in respect to the tasks assigned to it by national law;
- (2) 'SSM Ethics Framework' means the provisions of this Guideline as implemented by the ECB and each of the NCAs;
- (3) 'non-public information' means information, irrespective of its form, that pertains to the performance of supervisory tasks conferred on the ECB and the NCAs and which has not been made public;
- (4) 'market-sensitive information' means non-public information of a precise nature which, if made public, is likely to have a significant effect on the price of assets or prices in the financial markets;
- (5) 'member of staff' means a person who has an employment relationship with the ECB or an NCA except if that person is solely entrusted with tasks not related to the performance of supervisory tasks under Regulation (EU) No 1024/2013;
- (6) 'member of a body' means a member of a decision-making or other internal body of the ECB or the NCAs other than a member of staff, except if that member of a body is solely entrusted with tasks not related to the performance of supervisory tasks under Regulation (EU) No 1024/2013;
- (7) 'regulated entity' means any of the following:
 - a) a monetary financial institution (MFI) as defined in point (1)(b) of Article 2 of Regulation (EU) 2021/379 of the European Central Bank (ECB/2021/2) ⁽⁶⁾, but excluding money market funds;

⁽⁶⁾ Regulation (EU) 2021/379 of the European Central Bank of 22 January 2021 on the balance sheet items of credit institutions and of the monetary financial institutions sector (ECB/2021/2) (OJ L 73, 3.3.2021, p. 16).

- b) a non-MFI credit institution as defined in point (4) of Article 2 of Regulation (EU) 2021/379 (ECB/2021/2);
 - c) a financial holding company as defined in point (20) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽⁷⁾;
 - d) a mixed financial holding company as defined in point (15) of Article 2 of Directive 2002/87/EC of the European Parliament and of the Council ⁽⁸⁾;
 - e) a financial conglomerate as defined in point (14) of Article 2 of Directive 2002/87/EC that is subject to supplementary supervision by the ECB pursuant to Article 4 (1)(h) of Regulation (EU) No 1024/2013;
- (8) 'conflict of interest' means a situation where personal interests may influence, or may be perceived as influencing, the impartial and objective performance of duties and responsibilities;
- (9) 'personal interest' means a benefit or potential benefit, of a financial or non-financial nature, for a member of staff or a member of a body, including – but not limited to – a benefit for a direct family member (being any parent, child, brother or sister), spouse or partner;
- (10) 'short-term trading' means the purchase and subsequent sale of a financial instrument or the sale and subsequent purchase of the same financial instrument within 90 calendar days;
- (11) 'legacy asset' means a prohibited asset which was acquired by a member of a body or a member of staff prior to the prohibition of the asset or the prohibition becoming applicable to them, or which came into their possession at a later point in time due to circumstances over which they had no influence;
- (12) 'advantage' means a gift, hospitality or other benefit – whether financial, in kind or of another nature – which is not agreed compensation for services delivered and to which the recipient is not otherwise entitled.

Article 3

Conflicting national provisions and applicability of different ethics frameworks

1. Where an NCA is prevented by applicable national law from implementing a provision of this Guideline, it shall inform the ECB without undue delay and take reasonable measures at its disposal to overcome the obstacle posed by such national law, so as to achieve harmonised implementation of this Guideline across the SSM.
2. The provisions of this Guideline are without prejudice to more stringent ethics rules laid down by the ECB or the NCAs that are applicable to their members of staff and the members of their bodies.

⁽⁷⁾ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

⁽⁸⁾ Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

CHAPTER II

Standards of ethical conduct

PART 1

GENERAL PRINCIPLES*Article 4***Basic principles**

1. The ECB and the NCAs shall take the necessary measures to ensure that in carrying out their duties and responsibilities, their members of staff and the members of their bodies observe the highest standards of ethical conduct.
2. In complying with the obligation under paragraph 1, the ECB and the NCAs shall, in particular, take the necessary measures to ensure that their members of staff and the members of their bodies act honestly, independently, impartially, with respect and discretion avoiding any form of inappropriate behaviour or harassment, and without regard to self-interest, thereby maintaining and promoting public trust in the SSM.

*Article 5***Interactions with external parties**

The ECB and the NCAs shall take the necessary measures to ensure that their members of staff and the members of their bodies who meet with external parties – and in particular with representatives from the financial services industry – (a) maintain neutrality and equal treatment in their interactions with those external parties; (b) keep basic records of the meetings; and (c) avoid any conduct that could be perceived as granting external parties any advantages, including advantages of a commercial or prestige nature.

PART 2

PREVENTING AND MANAGING CONFLICTS OF INTEREST*Article 6***Conflicts of interest**

1. The ECB and the NCAs shall have a mechanism in place to manage a situation in which a candidate who will be appointed as a member of staff has a conflict of interest resulting, inter alia, from previous occupational activities, financial holdings, private activities or personal relationships.
2. The ECB and the NCAs shall adopt internal rules requiring their members of staff and the members of their bodies to avoid during their employment any situation liable to give rise to a conflict of interest and to report such situations. The ECB and the NCAs shall take the necessary measures to ensure that, when a conflict of interest is reported, it is duly registered and appropriate measures are available and taken to resolve or mitigate such a conflict of interest, including release from duties relating to the relevant matter.
3. The ECB and the NCAs shall have a mechanism in place to assess and avoid possible conflicts of interest arising from post-employment occupational activities undertaken by their members of staff and the members of their bodies, including appropriate notification requirements and cooling-off periods.

4. The ECB and the NCAs shall, where relevant, have a mechanism in place to assess and avoid potential conflicts of interest arising from occupational activities undertaken by their members of staff and the members of their bodies during unpaid leave.

Article 7

Prohibition on receiving advantages

1. The ECB and the NCAs shall adopt internal rules prohibiting their members of staff and the members of their bodies from soliciting, receiving or accepting a promise related to receiving for themselves or any other person any advantage connected in any way with the performance of their official duties and responsibilities.
2. The ECB and the NCAs may specify in their internal rules exemptions from the prohibition laid down in paragraph 1 as regards advantages offered by central banks, NCAs, Union institutions, bodies or agencies, international organisations and government agencies as well as academia, and as regards advantages of a customary or negligible value offered by the private sector, provided in the latter case that these advantages are neither frequent nor from the same source. The ECB and the NCAs shall take the necessary measures to ensure that these exemptions do not influence and may not be perceived as influencing the independence and impartiality of their members of staff and the members of their bodies.

PART 3

PROFESSIONAL SECRECY AND PREVENTING THE MISUSE OF NON-PUBLIC INFORMATION

Article 8

Professional secrecy and prohibition on disclosure of non-public information

Bearing in mind the professional secrecy requirements deriving from Article 37 of the Statute of the European System of Central Banks and the European Central Bank, Article 27 (1) of Regulation (EU) No 1024/2013 and Article 53 of Directive 2013/36/EU of the European Parliament and of the Council ⁽⁹⁾, the ECB and the NCAs shall take the necessary measures to ensure that their members of staff and the members of their bodies comply with the professional secrecy requirements applicable to them and are prohibited from disclosing non-public information to third parties unless authorised to disclose such information.

Article 9

Prohibition on misusing non-public information

1. The ECB and the NCAs shall take the necessary measures to ensure that their members of staff and the members of their bodies are prohibited from misusing non-public information.
2. The prohibition on misusing non-public information shall cover, as a minimum, the use of non-public information: (a) for private financial transactions for one's own account or for the account of third parties; and (b) in order to recommend or induce third parties to act on that non-public information.

⁽⁹⁾ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

*Article 10***General principles regarding private financial transactions**

The ECB and the NCAs shall take the necessary measures to ensure that their members of staff and the members of their bodies are required – when conducting private financial transactions for their own account or for the account of any third party – to employ caution, exercise restraint and have a medium to long-term investment horizon.

*Article 11***Specific restrictions on critical private financial transactions**

1. Taking into account considerations of effectiveness, efficiency and proportionality, the ECB and the NCAs shall adopt internal rules applicable to members of staff and the members of bodies who in the performance of SSM tasks have access to market sensitive information, other than on a one-off basis (hereinafter ‘persons with access to market sensitive information’), introducing the specific restrictions set out in paragraph 2 concerning private financial transactions that are or may be perceived to be closely related to the performance of SSM tasks (hereinafter ‘critical private financial transactions’).

2. The internal rules referred to in paragraph 1 shall:

a) prohibit critical private financial transactions in:

- i) equity and debt instruments issued by a regulated entity;
- ii) derivatives related to equity and debt instruments issued by a regulated entity;
- iii) units of collective investment schemes that have a stated investment policy aimed exclusively at regulated entities; and

b) restrict other critical private financial transactions as necessary; and

c) restrict short-term trading.

3. Taking into account considerations of effectiveness, efficiency and proportionality, internal rules adopted pursuant to points b) and c) of paragraph 2 may consist of any one or more of the following restrictions on the relevant transaction:

- a) a prohibition;
- b) a requirement for prior authorisation;
- c) a requirement for ex ante or ex post reporting;
- d) an embargo period within which such transaction shall not be conducted.

4. In their internal rules, the ECB and the NCAs: (i) shall provide that persons with access to market sensitive information report their legacy assets whenever holding these assets raises a conflict of interest with their involvement in SSM tasks; and (ii) shall establish a mechanism to ensure that conflicts of interest arising from legacy assets are resolved within a reasonable period of time, including that it may be requested that legacy assets raising any conflicts of interest be sold within a reasonable period of time. The ECB and the NCAs may provide in their internal rules that legacy assets that do not raise conflicts of interest may be retained.

5. The ECB and the NCAs shall specify in their internal rules the conditions and safeguards under which persons with access to market sensitive information who entrust the management of their private financial assets to an independent third party under a written asset management agreement are exempt from the specific restrictions laid down in this Article.

6. The ECB and the NCAs may adopt internal rules that apply restrictions as set out in this Article to their members of staff and the members of their bodies other than persons with access to market sensitive information.

7. The ECB and the NCAs shall take the necessary measures to adjust their internal rules imposing specific restrictions on critical private financial transactions as referred in paragraph 2 to reflect decisions of the Governing Council.

CHAPTER III

Collaboration and implementation of the SSM Ethics Framework

Article 12

Independent ethics and/or compliance functions

1. The ECB and NCAs shall take necessary measures to ensure that they have a dedicated ethics and/or compliance function – which shall be a core risk management function – to support their decision-making bodies in implementing the SSM Ethics Framework. The ethics and/or compliance function shall be equipped with the appropriate standing, authority and independence necessary to perform its tasks. It shall report directly – hierarchically or functionally – to the highest management level within the ECB or the relevant NCA, as applicable. It shall be provided with adequate resources to carry out its tasks, and to keep abreast of pertinent developments and to keep its expert knowledge current.
2. The responsibilities of the ethics and/or compliance function in relation to the SSM Ethics Framework shall include: (a) giving advice and guidance on the interpretation and application of the SSM Ethics Framework; (b) raising awareness and conducting compulsory training; (c) identifying and assessing compliance risks; (d) monitoring and checking compliance; (e) reporting cases of non-compliance; (f) drafting or contributing to the drafting of the internal rules and practices of the ECB or the relevant NCA, as applicable; and (g) preparing the annual report by the ECB or the relevant NCA, as applicable and as referred to in Article 15 (1).
3. The ECB and NCAs shall take the necessary measures to ensure that their ethics and/or compliance function is involved, properly and in a timely manner, in issues which may have an impact on the SSM Ethics Framework.
4. The ethics and/or compliance function of the ECB and the NCAs shall treat information obtained in the conduct of their responsibilities with the utmost confidentiality and shall process and retain any personal data according to the applicable data protection rules.
5. In cases where the ethics and/or compliance function of the ECB and the NCAs carries out and fulfils other tasks and duties, the ECB and the NCAs shall take the necessary measures to ensure that any such tasks and duties are compatible with the ethics and/or compliance function itself or the tasks and duties of the organisational unit to which the ethics and/or compliance function is organisationally linked.

Article 13

Compliance monitoring

1. The ECB and the NCAs shall have mechanisms in place to monitor compliance with the rules implementing this Guideline. The monitoring shall include, in particular, compliance with the internal rules implementing the specific restrictions applicable to critical private financial transactions as provided for in Article 11 and, as appropriate, regular and/or ad hoc compliance checks.
2. Compliance monitoring shall be without prejudice to internal rules allowing for internal investigations if a member of their staff or a member of their bodies is suspected of having breached the rules implementing this Guideline.

Article 14

Reporting of non-compliance and follow-up

1. The ECB and the NCAs shall adopt internal rules on whistleblowing as well as internal procedures for the reporting of cases of non-compliance with the rules implementing this Guideline. Such internal rules and procedures shall include measures to ensure the appropriate protection of persons reporting cases of non-compliance.

2. The ECB and the NCAs shall take the necessary measures to ensure that potential cases of non-compliance are followed up, including as appropriate the imposition of proportionate disciplinary measures in accordance with the applicable disciplinary rules and procedures.

3. The ECB and the NCAs shall report any major incident related to non-compliance with their internal rules implementing this Guideline without undue delay via the Organisational Development Committee and the Supervisory Board to the Governing Council in accordance with the applicable internal procedures, and inform the Audit Committee and the ECC in parallel.

CHAPTER IV

Final provisions

Article 15

Reporting and review

1. The ECB and the NCAs shall transmit to the ECC their annual report on the implementation of this Guideline with a view to exchanging information on the implementation of this Guideline and preparing forthcoming reviews and/or to facilitating the development of common approaches, as referred to in paragraph 2 of Article 12.

2. The Governing Council shall review this Guideline at least every 3 years as from the date on which the rules and measures implementing the Guideline were to be applied at the latest as defined in Article 17(2) or upon the recommendation of the ECC.

Article 16

Repeal

1. Guideline (EU) 2015/856 (ECB/2015/12) is hereby repealed.

2. References to Guideline (EU) 2015/856 (ECB/2015/12) shall be construed as references to this Guideline and shall be read in accordance with the correlation table in the Annex to this Guideline.

Article 17

Taking effect and implementation

1. This Guideline shall take effect on the day of its notification to the NCAs.

2. The ECB and the NCAs shall take the necessary measures to implement and comply with this Guideline and apply the rules and measures implementing the Guideline from 1 June 2023. The NCAs shall inform the ECB of any obstacles for the implementation of this Guideline and shall notify the ECB of the texts and means relating to those measures by 1 April 2023 at the latest.

Article 18

Addressees

This Guideline is addressed to the ECB and the NCAs.

Done at Frankfurt am Main, 2 November 2021.

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

ANNEX

Correlation table

Guideline (EU) 2015/856 (ECB/2015/12)	This Guideline
Article 1	Article 2
Article 2	Article 1
Article 3	/
Article 4	/
Article 5	Article 13
Article 6	Article 14
Article 7	Article 9
Article 8	Article 11
Article 9	Article 6
Article 10	Article 7
Article 11	Article 17
Article 12	Article 15
Article 13	Article 18