



EUROPEAN CENTRAL BANK
EUROSYSTEM

DECISION OF THE EUROPEAN CENTRAL BANK

of 25 July 2013

**amending the European Central Bank Staff Rules as regards underperformance procedures
(ECB/2013/NP11)**

THE EXECUTIVE BOARD OF THE EUROPEAN CENTRAL BANK,

Having regard to the Rules of Procedure of the European Central Bank, and in particular Article 21 thereof,

Having regard to the Conditions of Employment for Staff of the European Central Bank (hereinafter the 'Conditions of Employment'), and in particular Article 11 thereof,

Having regard to the opinion of the Staff Committee,

Whereas:

- (1) The ECB promotes a working culture of sustained high performance and continuous professional development in line with its values. It is therefore committed to encouraging its members of staff to at least perform satisfactorily and to supporting members of staff who underperform in reverting to at least satisfactory performance.
- (2) The underperformance procedure needs to be conducted in a fair, equitable, reasonable and non-discriminatory manner and mindful of the principle of proportionality.
- (3) Managers play a crucial role in maintaining high performance standards. They are expected to promptly and adequately signal, document and manage cases of underperformance,

HAS ADOPTED THIS DECISION:

Article 1

Amendments to the European Central Bank Staff Rules

The Staff Rules are amended as follows:

1. Article 2.2.5 is deleted.
2. The following words are inserted in Article 4.6.3(ii) after the words 'whose contract is terminated by the ECB for disciplinary reasons': 'or for reasons of underperformance'.

3. The following words are inserted as a third bullet point in Article 5.13.2: ‘a member of staff is scheduled to attend a disciplinary or underperformance hearing; or’.
4. The following Article 8.5 is added:

‘8.5 Underperformance procedure

The provisions of Article 11.(a)(i) of the Conditions of Employment are applied as follows:

Initiation of an underperformance procedure

8.5.1 Underperformance shall mean a repeated and significant discrepancy between the expected and the actual performance of a member of staff, which takes into consideration performance related to both technical and behavioural competencies.

A discrepancy shall be considered to be significant when members of staff do not fulfill the objectives assigned to them.

8.5.2 An underperformance procedure shall be initiated if two consecutive annual appraisals establish underperformance. Such appraisals shall state in writing all of the following:

- the expected performance as previously communicated to the member of staff,
- the actual performance,
- the discrepancy between the expected and actual performance and its significance,
- the required improvements,
- the timeline for such improvements.

8.5.3 The underperformance procedure shall not be initiated:

- (a) for members of staff who have not completed their probationary period;
- (b) for members of staff who participate in the ECB’s Graduate Programme, unless the Graduate Programme participant was engaged at the ECB as a member of staff for an indefinite period immediately prior to their participation in the ECB’s Graduate Programme;
- (c) for members of staff for whom the ECB’s Medical Adviser has established that a medical condition is the main and direct cause of the underperformance;
- (d) for members of staff elected to represent staff interests or nominated representatives of recognised trade unions and their alternates who are officially dispensed from at least 25% of their work for their respective business area for most of the relevant performance cycle.

8.5.4 When the second consecutive annual appraisal establishes underperformance, the line manager shall, without undue delay and with the endorsement of the

area head of the area to which the member of staff belongs, propose to the Director General Human Resources, Budget and Organisation or their Deputy the initiation of an underperformance procedure. The line manager shall inform the member of staff of such a proposal and of the possibility of requesting a hearing in accordance with this Article.

Within 10 working days of receipt of the proposal to initiate the underperformance procedure, the member of staff may request to be heard by the Director General Human Resources, Budget and Organisation or their Deputy prior to the decision whether or not to initiate an underperformance procedure.

During such a hearing, the member of staff may be assisted by another member of staff of their choice and shall comprehensively put forward all facts and, where applicable, supporting evidence to be taken into account for the decision whether or not to initiate an underperformance procedure.

In particular if, during such a hearing, the Director General Human Resources, Budget and Organisation or their Deputy considers, or if the member of staff invokes, a medical condition as the main and direct cause of the underperformance, the Director General Human Resources, Budget and Organisation or their Deputy shall immediately refer the member of staff to the ECB's Medical Adviser for examination. In this case, a decision whether or not to initiate an underperformance procedure shall be postponed until receipt of the reply from the ECB's Medical Adviser.

8.5.5 Within three months from receipt of the proposal, the Director General Human Resources, Budget and Organisation or their Deputy shall decide whether or not to initiate an underperformance procedure.

In deciding whether or not to initiate an underperformance procedure, the Director General Human Resources, Budget and Organisation or their Deputy shall assess whether a repeated and significant discrepancy between the expected and actual performance has been sufficiently established and documented and shall take into account all facts and supporting evidence presented in accordance with Article 8.5.4. The Director General Human Resources, Budget and Organisation or their Deputy shall inform the member of staff in writing of their decision as to whether or not to initiate an underperformance procedure, including, where applicable, a statement on the discrepancy between the expected and actual performance and that the underperformance is such that a termination of the employment contract or demotion is envisaged at the end of the procedure, unless the performance significantly improves to sustainably reach at least a satisfactory level. During

the underperformance procedure, the member of staff may be assisted by another member of staff of their choice.

Establishment of a Performance Improvement Plan

8.5.6 Within 10 working days from the initiation of an underperformance procedure, the line manager and the area head of the area to which the member of staff belongs shall jointly establish a draft Performance Improvement Plan (PIP) to which the member of staff shall be invited to contribute.

The PIP shall establish:

- concrete objectives to help the member of staff to bring performance back to at least a satisfactory level,
- the support to be provided to help the member of staff to reach these objectives,
- supplemental assistance in the form of training, coaching, mentoring and/or counselling that will be offered to the member of staff,
- the dates of regular performance reviews at which feedback is provided on the development of the performance,
- the date of the final performance review at which the level of performance will be re- assessed.

The line manager shall communicate the draft PIP to the member of staff, who may present their written observations within 10 working days of receipt thereof. Based on the draft PIP and, where applicable, the written observations by the member of staff, the Director General Human Resources, Budget and Organisation or their Deputy shall endorse the final PIP.

The final performance review shall take place between 6 and 12 months from the member of staff's receipt of the final PIP. In exceptional duly justified cases, the Director General Human Resources, Budget and Organisation or their Deputy may authorise that the final performance review may take place up to 24 months from the member of staff's receipt of the final PIP. The underperformance procedure shall in no case extend beyond the normal end of the contract.

8.5.7 At the regular performance review dates, the line manager shall provide feedback to the member of staff on the development of their performance.

Within 10 working days from a regular performance review, the line manager shall document their feedback in writing and communicate it to the member of staff. The member of staff may present their written observations within 10 working days of receipt thereof.

8.5.8 Within 10 working days from the final performance review, the line manager shall assess the performance development and its sustainability in writing and communicate it to the member of staff after endorsement by the area head of the area to which the member of staff belongs and the Director General Human Resources, Budget and Organisation or their Deputy. The member of staff may present their written observations within 10 working days from the receipt.

If, pursuant to such assessment:

- the performance has significantly and sustainably improved and has been qualified as at least satisfactory, the Director General Human Resources, Budget and Organisation or their Deputy shall close the underperformance procedure;
- the performance has significantly improved, but such improvement is not yet considered sustainable or satisfactory, the PIP may be revised accordingly and may determine a new final performance review date within the time limits specified in Article 8.5.6;
- the performance has not significantly improved, an underperformance hearing panel shall be established and shall schedule an underperformance hearing, in accordance with Article 8.5.9.

The underperformance hearing and panel

8.5.9 The Executive Board member to whom the Directorate General Human Resources, Budget and Organisation reports shall appoint the members of the underperformance hearing panel. This shall be composed of:

- (a) the Director General Human Resources, Budget and Organisation or their Deputy; or, where the member of staff belongs to the Directorate General Human Resources, Budget and Organisation, the Director General of the Directorate General Legal Services or their Deputy;
- (b) two area heads or deputies of area heads, one nominated by the member of staff and one nominated by the line manager of the member of staff.

The nominated area heads or deputies of area heads shall not belong to the business area of the member of staff and shall hold a position allocated to a higher salary band than the member of staff.

8.5.10 Where the member of staff subject to an underperformance procedure is an area head, the Executive Board shall appoint the members of the underperformance hearing panel. This shall be composed of:

- (a) the Executive Board member to whom the Directorate General Human Resources, Budget and Organisation reports, or, where the area head belongs to the Directorate General Human Resources, Budget and

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Organisation, the Executive Board member to whom the Directorate General Legal Services reports;

- (b) two Executive Board members, one nominated by the area head, and one nominated by the Executive Board member in charge of the area to which the area head belongs.

The nominated Executive Board members shall not be in charge of the business area of the area head.

The members of the underperformance hearing panel shall elect among themselves the Chair.

- 8.5.11 The member of staff subject to the underperformance procedure and the line manager of the member of staff, or Executive Board member in charge of the area to which the area head belongs, shall also nominate alternates to replace, if necessary, the respective members of the underperformance hearing panel.

The Staff Committee may nominate a non-voting staff representative to the underperformance hearing panel from a list of three names of members of staff submitted by the Staff Committee and the recognised trade unions. The Staff Committee and the recognised trade unions shall communicate and maintain at all times such list.

- 8.5.12 A member of the underperformance hearing panel may be excused from duty for legitimate reasons. A member of the underperformance hearing panel shall withdraw in the event of any situation or circumstances which are liable to give rise to or which may be perceived to give rise to a conflict of interest. Their alternate shall replace them.

- 8.5.13 The member of staff shall be informed of the composition of the underperformance hearing panel, including the alternates, and shall have the opportunity to reject any one of its members within five working days.

- 8.5.14 The deliberations and proceedings of the underperformance hearing panel shall be treated as ECB-CONFIDENTIAL-Personal in accordance with the ECB's rules on management and confidentiality of information. The members of the underperformance hearing panel shall act in their personal capacity and shall be completely independent in the performance of their duties.

- 8.5.15 The Chair of the underperformance hearing panel shall ensure implementation of decisions taken during the proceedings of the underperformance hearing panel and shall bring all related information and documents to the attention of its members and the member of staff.

- 8.5.16 A secretary appointed by the Director General Human Resources, Budget and Organisation or their Deputy shall assist the underperformance hearing panel and shall draw up minutes of its meetings.

- 8.5.17 The member of staff shall be informed of the date of the hearing and shall have at least 10 working days to prepare for the hearing.
- 8.5.18 The underperformance hearing panel shall hear the member of staff, the line manager and the area head of the area to which the member of staff belongs. The member of staff may present observations in writing and/or orally and be assisted by a member of staff of their choice. In exceptional cases of the member of staff repeatedly not providing observations in writing or not attending the underperformance hearing, the underperformance hearing panel may decide to proceed after having given the member of staff a final opportunity and at least 10 working days to present their observations.
- 8.5.19 The underperformance hearing panel and the member of staff may call individuals to testify. The member of staff and all individuals who have testified may transmit their observations within 10 working days from receipt of the minutes or transcripts of interviews.
- 8.5.20 Prior to the hearing, the underperformance hearing panel or the member of staff may request the recording of the hearing for the purpose of drawing up the minutes. These recordings shall be destroyed within six months from the final decision by the Executive Board or the closure of the underperformance procedure, unless they are needed for a possible follow-up such as judicial proceedings.

Decision by the underperformance hearing panel and/or Executive Board

- 8.5.21 The underperformance hearing panel shall, by majority vote, decide one of the following:
- (a) to establish a PIP and/or schedule another hearing,
 - (b) to close the underperformance procedure,
 - (c) to propose to the Executive Board demotion with a corresponding change in the employment position of the member of staff,
 - (d) to propose to the Executive Board termination of the employment contract of the member of staff.

Any underperformance hearing panel member may attach a divergent view to the above decision.

The underperformance hearing panel shall transmit its decision to the member of staff, the Director General Human Resources, Budget and Organisation or their Deputy and, where applicable, to the Executive Board, within 20 working days from the underperformance hearing.

The proposal to the Executive Board from the underperformance hearing panel shall be accompanied by the fully documented record of the underperformance procedure.

The member of staff may submit their observations to the Executive Board within 10 working days from the transmission of the underperformance hearing panel's proposal.

The Executive Board shall decide within 30 working days of expiry of the deadline for the member of staff to submit observations.

8.5.22 The Executive Board shall only decide to demote a member of staff where this is justified in the interest of the service.

If the Executive Board decides to demote a member of staff, the underperformance procedure shall only be deemed to be closed if the first annual appraisal established at least six months following demotion establishes at least satisfactory performance.

If the annual appraisal established at least six months following demotion establishes underperformance, an underperformance hearing shall be scheduled in accordance with Article 8.5.18; the underperformance hearing panel shall, by majority vote, decide one of the following:

- (a) to close the underperformance procedure,
- (b) to propose to the Executive Board termination of the employment contract.

Documents established in the underperformance procedure

8.5.23 All documents established in conjunction with or as a result of the underperformance procedure provided for by these Rules, and all documents submitted by the member of staff in the course of such procedure, shall be stored in the member of staff's personal file.

The member of staff may request insertion of any decision by the Executive Board not to terminate the employment contract in their personal file.

With the exception of appraisals and, where applicable, the decision by the Executive Board to demote the member of staff or to terminate the employment contract, these documents shall be removed from the personal file

- in case of an underperformance procedure, five years following its closure;
- in case of a proposed initiation of an underperformance procedure in accordance with Article 8.5.4 that has not been followed by an underperformance procedure, three years following completion of the second annual appraisal establishing underperformance, or at the request

of the member of staff at any point in time, after the member of staff was informed of the decision not to initiate an underperformance procedure in accordance with Article 8.5.5;

unless during that period another annual appraisal establishes underperformance or the documents are needed for a possible follow-up, such as judicial proceedings.’

Article 2

Assessment of the underperformance procedure after three years

The Director General Human Resources, Budget and Organisation or their Deputy shall initiate an assessment of the operational functioning of the underperformance procedure after three years of entry into force of this Decision.

Article 3

Entry into force

Unless data protection rules require its amendment, this Decision shall enter into force on a date to be established by a separate decision of the Executive Board member to whom the Directorate General Human Resources, Budget and Organisation reports, following completion of prior checking by the European Data Protection Supervisor in accordance with Article 27 of Regulation (EC) No 45/2001¹ on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

Done at Frankfurt am Main, 25 July 2013.

[signed]

The President of the ECB

Mario DRAGHI

¹ OJ L 8, 12.1.2001, p. 1.