

**Statute
of the Administrative Tribunal
of the European Stability Mechanism**

May 2016

Article 1
Establishment

In accordance with Article 23(4) of the Staff Rules of the European Stability Mechanism (the “Staff Rules”), a tribunal of the European Stability Mechanism (the “ESM”) is hereby established, to be known as the Administrative Tribunal of the European Stability Mechanism (the “Tribunal”).

Article 2
Jurisdiction

1. The Tribunal shall have jurisdiction in any dispute between the ESM, on the one hand, and members or former members of staff, or their respective successors in interest (each an “Appellant”), on the other hand, regarding the legality of an act or decision of the ESM adversely affecting the Appellant.
2. Except for an appeal against a decision by the Managing Director of the ESM (the “Managing Director”) pursuant to Article 22(1)(c) to (e) of the Staff Rules, an appeal to the Tribunal shall only be admissible if it is directed against an express or implied decision of the Managing Director pursuant to Article 23(2) of the Staff Rules rejecting, wholly or in part, an internal appeal.
3. The Tribunal shall not have any powers beyond those conferred upon it by this Statute. Nothing in this Statute shall limit or modify the powers of the organs of the ESM under the Treaty establishing the ESM (the “Treaty”), including the lawful exercise of their discretionary authority in the adoption of general or individual decisions, such as the establishment or amendment of conditions of employment of the staff of the ESM. Consequently, the Tribunal shall only have full jurisdiction with regard to disputes of a financial character or, with regard to disputes of a character other than financial, when the parties have agreed to submit the dispute to the full jurisdiction of the Tribunal.
4. The Tribunal shall, if necessary, settle any issue concerning its own jurisdiction.

Article 3
Composition

1. The Tribunal shall be composed of five members who shall be appointed by a unanimous decision of a committee (the “Committee”) following an open and transparent call for candidates.

The Committee shall be composed of five members. The chairman of the Committee shall be appointed by the Chairman of the Board of Governors of the ESM. The other members of the Committee shall be the Managing Director, the General Counsel, the Secretary General and a staff representative chosen among and by the ESM’s staff representatives (the “Staff Representative”). In the absence of a Staff Representative,

the Head of Human Resources of the ESM will be instead a member of the Committee, who will be immediately replaced by the Staff Representative, once he or she is appointed.

2. The members of the Tribunal shall be of high moral character and integrity. They shall be experienced legal professionals, possessing the qualification for appointment to judicial office and having expertise in matters relevant to the determination of cases under international administrative law.

The members of the Tribunal shall be fully independent and shall not receive any instructions in the exercise of their duties. They shall have no other prior or present office, employment or service relationship with the ESM, and shall not be eligible for any office or employment with, or representation of, the ESM following the end of their service with the Tribunal.

The members of the Tribunal shall be considered as ‘other staff members’ for purposes of Article 35(1) of the Treaty. The immunity of any member of the Tribunal may be waived by the Managing Director upon unanimous recommendation of the other members of the Tribunal, voting by secret ballot.

Any member of the Tribunal who has a conflict of interest in a particular case shall promptly recuse himself or herself and be replaced by another member, in accordance with the rules laid down in the rules of procedure of the Tribunal (the “Rules of Procedure”).

Before taking up his or her duties, each member of the Tribunal shall take an oath to perform his or her duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Tribunal.

3. The members of the Tribunal shall be appointed for a renewable term of office of five years. However, at the inception of the Tribunal, two out of the five members shall be appointed for a first term of four years.

Should a vacancy occur, an open and transparent call for candidates shall be immediately lodged enabling the Committee to appoint a new member of the Tribunal without undue delay, unless the Committee decides unanimously to reappoint a member of the Tribunal whose term of office is coming to an end.

The Committee may, by a unanimous decision, terminate the appointment of a member who, in the unanimous opinion of the other members of the Tribunal, no longer fulfils the requisite conditions or meets the obligations arising from his or her office, in particular due to serious illness or other circumstances affecting severely his or her working capacity or which would render the member for other reasons unsuited for further service on the Tribunal, such as the following non-exhaustive circumstances: a criminal conviction for an offence of dishonesty, professional disqualification as a result of disciplinary proceedings or deprivation of civil rights.

4. The Tribunal shall convene, in Luxembourg or via electronic means, either in plenary session (the “Full Tribunal”) or as a panel of three members.
5. The members of the Tribunal are entitled to emoluments as fixed in the non-public Annex to this Statute.

Article 4
Organisation

1. The Full Tribunal shall elect a president of the Tribunal (the “President”) and a vice-president of the Tribunal (the “Vice-President”) from among its members for a renewable term of four years.
2. The Vice-President or his or her replacement determined in accordance with the Rules of Procedure shall be the alternate of the President (the “Alternate”).
3. At the inception of the Tribunal, and until otherwise decided by the Full Tribunal, the President shall act as the registrar of the Tribunal (the “Registrar”).
4. The Tribunal shall take decisions by majority vote.

Article 5
Rules of Procedure

1. The Rules of Procedure shall be established by the Full Tribunal in consultation with the Managing Director, the General Counsel and the Secretary General of the ESM.
2. The Rules of Procedure shall contain any provisions necessary for applying and, where required, supplementing this Statute.
3. Subject to the terms of this Statute, the Rules of Procedure shall include provisions concerning:
 - (a) the institution of proceedings;
 - (b) the composition of panels;
 - (c) disqualification of members of the Tribunal or their inability to act for any other reason;
 - (d) representation of the parties;
 - (e) evidence;
 - (f) the conduct of the hearings;
 - (g) the nomination and duties of the Registrar;
 - (h) the review of judgments; and

- (i) all other matters relating to the functioning of the Tribunal.

Article 6
Proceedings

1. Proceedings before the Tribunal shall be instituted by the filing of a written appeal by the Appellant or his or her counsel, in the manner set forth in the Rules of Procedure.

When filing the appeal, the Appellant shall notify in writing and without delay the Managing Director of the filing of the appeal.
2. An appeal shall only be admissible if it has been filed within the time limits set forth in Article 7.
3. In exceptional circumstances, and at its sole and absolute discretion, the Tribunal may, if it considers the delay justified, waive the time limits set forth in Article 7 in order to admit an appeal that would otherwise be inadmissible.
4. Each party may be assisted in the proceedings by counsel of his or her choice, and shall bear all costs thereof, subject to Article 14(2).
5. The proceedings before the Tribunal shall be in English. English shall also be the internal working language of the Tribunal.

Article 7
Time Limits

The appeal referred to in Article 6 shall be filed with the Registrar within six weeks:

- (a) of the receipt by the Appellant of the express decision, pursuant to Article 23(2) second subparagraph of the Staff Rules, by which his or her internal appeal was rejected; or
- (b) in the case of an implied decision rejecting the internal appeal, of the end of the period referred to in Article 23(2) third subparagraph of the Staff Rules; or
- (c) in the case of a decision by the Managing Director pursuant to Article 22(1)(c) to (e) of the Staff Rules imposing a disciplinary measure, of the receipt by the Appellant of that decision.

Article 8
Panel, Procedure and Amicable Settlement

1. Appeals shall be decided by the Tribunal in a panel composed of the President and two other members.

2. As soon as an appeal has been filed, the President shall designate, in accordance with the Rules of Procedure, the other two members of the Tribunal who shall form the panel which is to judge the appeal.
3. The procedure before the Tribunal shall consist of two parts: a written part and, subject to the conditions laid down in the Rules of Procedure, an oral part. The written procedure shall comprise the appeal and the reply, and, if allowed for by the President, a second exchange of written observations. The oral hearing, which can be held in different sessions, shall be public, unless the public has been excluded according to the provisions set forth in the Rules of Procedure.
4. The proceedings of the Tribunal shall not be public. The deliberations of the Tribunal shall be and remain confidential.
5. The Tribunal may, at any stage of the procedure, examine the possibility of an amicable settlement of the dispute between the Appellant and the ESM, and propose one or more solutions capable of bringing the dispute to an end and adopt appropriate measures (including financial compensation) with a view to facilitating such settlement.
6. Unless justified by the exceptional circumstances pertaining to the appeal, the Tribunal shall conclude any appeal within a period of six months following the day it has been validly lodged. In organising the procedure, the Tribunal takes due account of this objective.

Article 9

Applicable Principles

1. The Tribunal shall apply the internal law of the ESM which reflects the exceptional nature of the ESM as a crisis resolution mechanism which needs to act rapidly and with limited human resources adapted to swift and time-critical intervention and decision making in accordance with its strict mandate under the ESM Treaty. The internal law of the ESM is designed to facilitate the proper functioning of the ESM which includes, amongst other things, the rapid and effective adoption and implementation of decisions related to staff matters.
2. The internal law of the ESM is to be interpreted *bona fide* and while taking into account the customs and practices of the ESM, its architecture as a small and efficient organisation, the particular environment in which the ESM is operating and the particularities of its internal law as specified in the previous paragraph.

Article 10

Powers of the Tribunal

1. If the Tribunal finds that the decision by the Managing Director, as referred to in Article 2(2) of this Statute, is illegal, wholly or in part, the ESM shall be required to take the necessary measures to comply with the judgment of the Tribunal. If agreed between the Appellant and the ESM, the Tribunal shall indicate these measures.

2. The filing of an appeal shall not have the effect of suspending the implementation of the act or decision contested, subject to such interim relief as the President may decide to grant.
3. The President may, but shall not be required to, render interim orders upon request by the Appellant.

Article 11
Judgments

1. The judgment shall be pronounced orally as soon as reasonably practicable after the end of any oral hearing. Each judgment of the Tribunal shall be in writing and state the reasons on which it is based.
2. Judgments of the Tribunal shall be final and without further appeal.

Article 12
Review of Judgments

1. If, after a judgment has been delivered by the Tribunal, new facts come to the knowledge of a party to the case which, had they been known at the time of the deliberations, might have had a decisive influence on said judgment, the party concerned may request revision of the judgment within 90 days of the new facts coming to his or her knowledge. Any decision as to whether or not to revise a judgment of the Tribunal in such circumstances shall be made by the President and two other members of the Tribunal and shall be final and without further appeal.
2. The Tribunal may interpret or rectify any judgment whose terms appear obscure or incomplete or which contains a typographical, clerical or arithmetical error.

Article 13
Archiving

The original of each judgment shall be filed in the archives of the Tribunal by the Registrar, where it shall be available for consultation by any person concerned. A copy attested by the President of the Tribunal shall be delivered to the parties.

Article 14
Costs

1. The costs of the Tribunal shall be borne by the ESM, including costs for witnesses and experts who have been summoned by the Tribunal. The Registrar will determine reasonable amounts payable to witnesses and experts.

The Tribunal does not charge a fee to the Appellant. If the Appellant has caused the Tribunal to incur avoidable costs, in particular where the action is manifestly an abuse

of process, the Tribunal may order that the Appellant refunds these costs in whole or in part up to a maximum amount of 2,000 EUR.

2. If the Tribunal concludes that an appeal is founded in whole or in part, it may order that the reasonable costs incurred in the proceedings by the Appellant, including reasonable fees of the Appellant's counsel, be totally or partially borne by the ESM.
3. If the Tribunal concludes that an appeal is manifestly without foundation or has been submitted principally for the purpose of delaying some legitimate act or decision of the ESM or of harassing the ESM or any of its officers or members of staff, the Tribunal may order that the Appellant indemnifies the ESM for part or all of the costs reasonably incurred by it in defending the case.

Article 15
Periodical Reports

The President shall periodically provide the Managing Director with a report on the cases which have been filed with and concluded by the Tribunal.

Article 16
Amendments

This Statute may be amended by the Board of Directors after consultation of the Full Tribunal and the Managing Director.

Article 17
Access to the jurisdiction of the Court of Justice of the European Union

If, following a request by the ESM, the Court of Justice of the European Union grants the ESM access to the jurisdiction of the Court of Justice of the European Union for staff matters via the Civil Service Tribunal of the latter, the Tribunal shall be wound up and the office of members of the Tribunal shall come to an end once they have concluded all the pending appeals before the Tribunal.