

**ADMINISTRATIVE TRIBUNAL
OF THE EUROPEAN STABILITY MECHANISM**

Rules of Procedure

December 2014

CHAPTER I
ORGANISATION AND FUNCTIONING

Article 1
General

1. These Rules of Procedure are established pursuant to Article 5(1) of the Statute of the Administrative Tribunal of the European Stability Mechanism (the “Tribunal”) (the “Statute”).
2. In these Rules of Procedure, unless otherwise specified herein, capitalised terms shall have the same meanings as ascribed to them in the Statute.
3. In the event of a conflict between any provision of these Rules of Procedure and any provision of the Statute, the latter shall prevail.

Article 2
Oath, Affirmation and Declaration

1. Pursuant to Article 3(2) of the Statute, before taking up his or her duties, a member of the Tribunal shall take the following oath or make the following affirmation before the Tribunal or, at inception of the Tribunal, before the Managing Director, the General Counsel and the Secretary General of the European Stability Mechanism (the “ESM”):

“I swear/affirm that I will perform my duties impartially and conscientiously;

I swear/affirm that I will preserve the secrecy of the deliberations of the Tribunal.”
2. Immediately after taking the oath or making the affirmation, a member of the Tribunal shall sign a declaration by which he or she solemnly undertakes that, both during and after his or her term of office, he or she will respect the obligations arising therefrom, and in particular the duty to behave with integrity and discretion.

Article 3
President and Vice-President

1. The President of the Tribunal shall direct the proceedings of the Tribunal and represent the Tribunal in all administrative matters.
2. The election of the President shall be by secret ballot. The member of the Tribunal obtaining the votes of more than half of the members of the Tribunal shall be elected. If no member of the Tribunal obtains that majority, further ballots shall be held until that majority is attained.

3. The election of the Vice-President shall be by secret ballot. The member of the Tribunal obtaining the votes of more than half of the members of the Tribunal shall be elected. If no member of the Tribunal obtains that majority, further ballots shall be held until that majority is attained.
4. If the President is unable to act, the Vice-President or, if both the President and the Vice-President are unable to act, the most senior of the remaining members of the Tribunal shall exercise the functions of President at and between sessions. Where there is equal seniority in office among the remaining members of the Tribunal, the eldest shall exercise those functions.

Article 4

Appointment and Duties of the Registrar

1. Should the Full Tribunal, in consultation with the ESM, decide to appoint a Registrar in accordance with Article 4(3) of the Statute, his or her remuneration will be determined by the ESM. Until the effective date of such appointment, the President shall act as the Registrar. The President, in performing the tasks of the Registrar, shall be supported by the EFTA Court's Registry. Under the authority of the President and acting through him or her, the EFTA Court's Registry shall perform the tasks allocated to the Registrar by the Statute and these Rules of Procedure, while ensuring the confidentiality of any information it handles. The ESM shall enter into a Memorandum of Understanding with the EFTA Court implementing this provision and laying down the terms for providing said support.
2. The Registrar shall be of high moral character and integrity and shall be an experienced legal professional.
3. Before taking up his or her duties, the Registrar shall take the following oath or make the following affirmation before the Tribunal:

"I swear/affirm that I will perform my duties impartially and conscientiously",

and sign the declaration set forth in Article 2(2).
4. The Registrar shall assist the Tribunal, the President and the members of the Tribunal in the performance of their functions. He or she shall be responsible, under the authority of the President, for:
 - (a) accepting, transmitting and keeping custody of all documents of the Tribunal;
 - (b) sending notices and other communications on behalf of the Tribunal in accordance with the Statute and these Rules of Procedure;
 - (c) preparing a written record of the sessions of the Tribunal;
 - (d) ensuring the administration and keeping the accounts of the Tribunal;
 - (e) arranging for the publication of judgments of the Tribunal; and

- (f) unless otherwise specified, communicating to the parties the written instructions of the President or the Tribunal.
- 5. Subject to Article 7(2), the Registrar shall attend the sessions of the Tribunal but shall not take part in the deliberations.

Article 5
Sessions of the Tribunal

- 1. The Tribunal shall hold sessions whenever the caseload so requires.
- 2. The President, in consultation with the other members of the Tribunal, shall set and may amend the dates of the sessions of the Tribunal.

Article 6
Composition of Panels

- 1. In accordance with Article 8(1) of the Statute, appeals shall be decided by the Tribunal in a panel composed of the President and two other members. Decisions of a panel are decisions of the Tribunal.
- 2. Not more than 15 days after deciding that the appeal has met the formal requirements for instituting proceedings pursuant to Article 13, the Full Tribunal, following a proposal by the President, shall designate the other two members of the Tribunal who, together with the President, shall form the panel that is to decide the appeal. Such designation shall give due consideration to the principle of rotation and equitable distribution of workload. The President shall inform the parties of the composition of the panel.
- 3. If a member recuses himself or herself, withdraws or is disqualified, he or she shall be replaced by another member designated by the President.

Article 7
Inability to Act or Disqualification of Members of the Tribunal

- 1. In accordance with Article 3(2) of the Statute, any member of the Tribunal who has a conflict of interest in a particular case shall promptly recuse himself or herself and shall be replaced by another member designated by the President.

A conflict of interest shall be deemed to exist in any of the following circumstances:

- (a) when the member has a personal, family or professional relationship with a person involved in the case;
- (b) when the member has previously been involved in the dispute in any other capacity;

- (c) when other circumstances exist that may be perceived to give rise to bias in the member's judgment or in the judgment of the President.
2. When, as contemplated by Article 3(3) of the Statute, the Tribunal is called upon to consider adopting an opinion to the effect that one of its members no longer fulfils the requisite conditions or meets the obligations arising from his or her office, the President shall invite the member of the Tribunal concerned to make representations to the Full Tribunal in closed session and in the absence of the Registrar.

The member of the Tribunal concerned shall not take part in the deliberations or the vote. Voting shall be by secret ballot. For the opinion to be carried, it must receive a unanimous vote.

Article 8

Deliberations of the Tribunal

1. In accordance with Article 6(5) of the Statute, the working language of the Tribunal shall be English.
2. In accordance with Article 8(4) of the Statute, the deliberations of the Tribunal shall be, and shall remain, confidential.

CHAPTER II

PROCEEDINGS

Article 9

Representation of Parties

1. The ESM shall be represented by the Managing Director, the General Counsel or the latter's designate, and/or by any such external counsel as the General Counsel may appoint.
2. In accordance with Article 6(4) of the Statute, the Appellant may be assisted in the proceedings by counsel of his or her choice, who is currently entitled to practise.
3. When appointing counsel, a party shall advise the Registrar thereof in writing. Unless otherwise specified in such writing, such counsel shall be authorised to sign pleadings, to receive any notification, to appear before the Tribunal and to take all other necessary action in connection with the pursuance of the case on behalf of the relevant party unless and until such party shall have revoked its designation of counsel by notice in writing to the Registrar.
4. Each party shall bear all fees and costs of its counsel, unless the Tribunal decides otherwise pursuant to Article 14(2) or (3) of the Statute.

Article 10

Procedure before the Tribunal

1. In accordance with Article 8(3) of the Statute and subject to Article 20, the procedure before the Tribunal shall consist of a written part and an oral part, unless each party and the Tribunal consider that an oral hearing would not further the adjudication of the Appeal.
2. The written procedure shall, at a minimum, comprise the submission of a written appeal by the Appellant and a written reply by the ESM, as provided by Articles 13 and 14. The President, after consultation with the members of the panel, may allow or require a second exchange of written pleadings between the parties, as provided by Article 15.
3. The oral hearing shall include oral arguments by the parties or their counsel and may, with leave from the President, include oral testimony by witnesses and experts.
4. The President may establish, and adapt as appropriate in the course of the proceedings, a timetable for the submission of the written reply and any further exchanges of written pleadings, consistent with the time limits prescribed by Articles 14 and 15, and for the submission of evidence and, where relevant, for the oral hearing. Time limits indicated in any such timetable may only be extended by the President in exceptional circumstances in response to a reasoned, written request of a party.

Article 11

Amicable Settlement

In accordance with Article 8(5) of the Statute, at any stage of the procedure, the Tribunal may examine the possibility of an amicable settlement and make a proposal to this end.

Article 12

Language of Proceedings

In accordance with Article 6(5) of the Statute, proceedings before the Tribunal shall be conducted in English. All documents must be submitted in English or, in exceptional cases where supporting documents from administrative, educational or other authorities or expert reports in jurisdictions where an English version is not available, with an English translation certified to the Tribunal's satisfaction. Where an English translation is provided in the latter circumstances, the English translation of the document shall prevail.

Article 13

Institution of Proceedings

1. Proceedings before the Tribunal shall be instituted by the filing of a written appeal in accordance with Article 26 by the Appellant or by his or her counsel on his or her behalf. Such appeal must be signed by or on behalf of the Appellant and shall include the following information:

- (a) the name of the Appellant;
 - (b) the capacity in which the Appellant is filing the appeal, for the purposes of Article 2(1) of the Statute;
 - (c) the name of any counsel assisting or of other person or persons legally representing the Appellant;
 - (d) the act or decision being challenged and, in case of an implied decision pursuant to Article 23(2) third subparagraph of the Staff Rules, the date the internal appeal was filed;
 - (e) a statement of the relevant facts;
 - (f) the grounds on which the Appellant challenges the legality of the contested act or decision and the arguments relied upon in support of those grounds;
 - (g) any request for interim relief and the grounds for such request, without prejudice to the right to request interim relief at a later stage of the proceedings;
 - (h) the remedy or remedies being sought by the Appellant;
 - (i) any request for production of documents pursuant to Article 16(1), without prejudice to the right to make such request at a later stage of the proceedings;
 - (j) any request for measures of organisation of procedure or of inquiry, with reasons for the request, without prejudice to the right to make such request at a later stage of the proceedings;
 - (k) any request for anonymity pursuant to Article 19(2), without prejudice to the right to request anonymity at a later stage of the proceedings; and
 - (l) the mailing and e-mail address at which, in accordance with Article 26, the Appellant accepts to receive any notices and communications in relation to the appeal, and the telephone number at which the Appellant accepts to be contacted for organisational purposes.
2. The written appeal shall be accompanied by all documentary evidence adduced in support of the Appellant's case in original or unaltered copy. In accordance with Article 12, in the exceptional cases where an English version of the supporting documents is not available, they shall be accompanied by an English translation certified to the Tribunal's satisfaction.

The documentary evidence shall include the act or decision being challenged, as well as evidence that the Appellant has satisfied the requirements of Article 2(2) of the Statute and that the appeal is being submitted to the Tribunal within the time limits prescribed by Article 7 of the Statute.

In appeals challenging disciplinary measures taken pursuant to Article 22(1)(b) of the Staff Rules, the evidence before the Tribunal shall include any opinion of the Joint Committee and the decision of the Managing Director.

In appeals arising through the dispute settlement procedures provided by Article 23 of the Staff Rules, the evidence before the Tribunal shall include the internal appeal and, where applicable, the decision of the Managing Director.

Where the evidence relied on in support of an appeal is not in documentary form, the appeal shall indicate its nature and source, with full name and details of any witness whose evidence is offered.

3. The President shall promptly ascertain whether the written appeal satisfies the formal requirements of the preceding paragraphs and shall advise the Appellant of any deficiencies, giving him or her a reasonable period of time, not exceeding 15 days, in which to make the appropriate changes.

If such changes are made within such period, the appeal shall be considered filed on the original date for purposes of the time limits set forth in Article 7 of the Statute and shall be notified to the ESM.

If such changes are not made within that period, the President may, by reasoned order, notify the Appellant that the submission does not constitute an appeal and cannot be validly filed.

Article 14

Reply to the Appeal

1. The ESM shall submit a written reply within 30 days of notification of the appeal.
2. Article 13(1)(c), (e) and (l) and Article 13(2) and (3) shall apply *mutatis mutandis* to the reply. The reply shall include the ESM's answer to the matters referred to in Article 13(1)(f) to (k), as well as any requests by the ESM for production of evidence or anonymity of persons, without prejudice to the right to make such requests at a later stage of the proceedings.

Article 15

Further Written Pleadings

1. The President, after consultation with the members of the panel, may allow a rebuttal either on his or her own motion or in response to a reasoned request by the Appellant. Any such request shall be presented within seven days of notification of the reply. The President may direct that the rebuttal be limited to certain matters.
2. If a rebuttal is authorised, it shall be submitted within 14 days of notification of the authorisation. The rebuttal shall be notified to the ESM.
3. The ESM may submit a rejoinder within 14 days of notification of the rebuttal.

Article 16

Evidence and Measures of Investigation and Instruction

1. At any time in the course of the proceedings, the Tribunal may, on its own motion or in response to a reasoned request of a party, adopt such measures of investigation or instruction as it deems appropriate, including:
 - (a) requiring the parties to produce any documents or answer any question that the Tribunal considers necessary to deciding the appeal;
 - (b) the personal appearance of the parties before it;
 - (c) the taking of evidence, in writing or orally, of experts, witnesses and any competent authority; and
 - (d) inspection of the place or thing in question.
2. If the ESM considers that certain information is secret or confidential, or its disclosure might harm the operations of the ESM or its relations with a Member State of the European Union or an international organisation or an institution of the European Union, or would infringe on the reputation or right of privacy of other individuals, the ESM may, subject to the Tribunal's acceptance, delete such information from the document to be produced or produce a summary or redacted version of that document. Such production shall be accompanied by a written explanation of the underlying reasons.

The Tribunal shall promptly ascertain whether it accepts the document as produced by the ESM. If the Tribunal does not accept such document, it may order the production of the original document in camera, whereby the original document shall be disclosed in a room only to the Tribunal, the parties and their counsel, which can take notes but cannot make copies thereof, or take other measures so as to ensure the secrecy or confidentiality of such information.
3. Without prejudice to paragraph 2, the ESM may withhold information or documents if it determines that the production of that information or document might harm the operations of the ESM because of the secret or confidential nature of that information. Such a determination shall be binding on the Tribunal. The Appellant's allegations concerning the contents of any information or document so withheld shall constitute *prima facie* evidence as to that information or document and shall create a rebuttable presumption as to the accuracy of the allegations, so long as there is no other evidence presented to contradict the allegations. In case there is such other probative evidence presented, the Tribunal shall have to weigh all of the evidence before it in order to make an appropriate finding.
4. The Tribunal may examine experts, witnesses and any competent authority subject to the same qualifications as specified in paragraphs 2 and 3.
5. The parties shall be under no obligation to disclose any legal advice provided by or through their internal or external legal advisers or counsel.

Article 17
Conduct of Oral Hearings

1. The President shall determine the conduct of the oral hearing, which may be held in one or more sessions.
2. In accordance with Article 8(3) of the Statute, the oral hearing shall be public unless the Tribunal determines otherwise on grounds of confidentiality or privacy. In the latter case, the oral hearing shall be held in private, with attendance limited to the members of the Tribunal and the Registrar, as well as the parties and their counsel or legal representatives, and such expert and other witnesses as the Tribunal has authorised to attend.
3. The Tribunal may limit the oral hearing to the oral arguments of the parties or their counsel or legal representatives where it considers the written evidentiary record to be adequate.
4. The Registrar shall draw up minutes of the oral hearing. The minutes shall be signed by the President and by the Registrar and shall be notified to the parties.

Article 18
Participation in Hearings and Deliberations by Electronic Means

1. Pursuant to Article 3(4) of the Statute, hearings and deliberations may be conducted by electronic means only if circumstances so require.
2. In the event of incapacity of the Appellant to participate physically in any oral hearing, and if both the Tribunal and the ESM so agree, the Appellant, when represented by counsel, may participate by electronic means.

Article 19
Confidentiality of Proceedings and Protection of Participants

1. In accordance with Article 8(4) of the Statute and subject to Article 8(3) of the Statute and Article 17 of these Rules, relating to the conduct of oral hearings, the proceedings of the Tribunal and all documents filed in such proceedings shall be confidential.
2. An Appellant may make a reasoned request that his or her identity, including his or her name, position and any other information permitting the identification of the individual, or that of any other named individual or any other confidential information not be made public by the Tribunal. The ESM may likewise request that the identity of any named individual, including the name, position and any other information permitting the identification of the individual, or any information for which the ESM claims confidentiality in line with Article 16 not be made public by the Tribunal. In response to a reasoned request by any of the parties, or on its own motion, the Tribunal shall adopt appropriate measures in that respect, including the redaction of the abovementioned information.

Article 20

Appeals which are manifestly inadmissible, outside the Jurisdiction of the Tribunal or manifestly unfounded

By reasoned order, the Tribunal may dismiss at any time an appeal that is manifestly inadmissible, outside the jurisdiction of the Tribunal or manifestly lacking in any basis in law.

Article 21

Judgments

1. In accordance with Article 11(1) of the Statute, the judgment shall be pronounced orally by the President in the presence of the Registrar 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. The Tribunal shall render its judgments by majority vote, although the judgments shall not specify by which majority they were adopted.
2. Once the Tribunal has adopted the final text of the judgment, the judgment shall be dated and signed by the President and the Registrar, and shall include the names of the members of the Tribunal who sat in the case.
3. The judgment shall be transmitted to the parties by a means which ensures proof of notification. A judgment shall bind a party from such notification.
4. The Registrar shall arrange for the prompt publication on the Tribunal's website of the judgment drawn in accordance with Article 19(2).

Article 22

Rectification of Judgments

The Tribunal may, on its own motion at any time, or in response to a reasoned request by a party made within 15 days of the notification of the judgment to that party, rectify any judgment which contains a typographical, clerical or arithmetical error, in accordance with Article 12(2) of the Statute.

Article 23

Interpretation and Implementation of Judgments

1. In accordance with Article 12(2) of the Statute, in the event of a dispute as to the meaning of a judgment whose terms appear obscure or incomplete, any party to the judgment may at any time make a reasoned request for an interpretation by the Tribunal.
2. In accordance with Article 10(1) of the Statute, in the event of a dispute as to the measures necessary to implement a judgment, both parties may agree to submit a reasoned request in that respect to the Tribunal.

3. Any such interpretation or guidance for its implementation shall be given by reasoned order of the Tribunal.

Article 24
Revision of Judgments

Any decision on a request for revision of a judgment of the Tribunal in the circumstances contemplated in Article 12(1) of the Statute shall be made by the President and the two members of the Tribunal who have judged the appeal.

CHAPTER III
OTHER MATTERS

Article 25
Time Limits

1. Time limits laid down in or pursuant to the Statute and these Rules of Procedure refer to calendar days, unless otherwise specified.
2. Time shall run from 00.00 hours on the day following that on which the relevant event occurs. If the last day of the period is a Saturday, a Sunday or a public holiday observed by the ESM, the relevant time limit shall expire at the end of the next working day of the ESM. For the purposes of this provision, a list of the public holidays observed by the ESM shall be made available by the ESM to the Appellant, the Registrar and the Tribunal.
3. Time limits laid down in or pursuant to the Statute and these Rules of Procedure may be extended by the Tribunal in response to a reasoned request, with the exception of the time limit to file the appeal as set out in Article 7 of the Statute, which may be extended by the Tribunal only pursuant to Article 6(3) of the Statute.

Article 26
Filing, Notices and Communications

1. Except as provided in paragraph 2 below, the written pleadings and all other written communications that the parties address to the Tribunal shall be submitted to the Registrar by e-mail in PDF format, to the e-mail address of the Registrar then indicated on the website of the Tribunal.
2. In response to a reasoned request made within 7 days of the event specified in Article 7 of the Statute, the Registrar may allow the Appellant to submit the abovementioned documents by registered mail or express courier to the mailing address of the Registrar then indicated by the Registrar. The Registrar shall adopt a decision in that respect within 7 days of receipt of such request and, in the event of a favourable

decision, shall specify the applicable time limits for the documents to be submitted by the Appellant.

3. The Registrar shall acknowledge any written communication from a party within 7 days of its receipt.
4. For the purpose of determining compliance with the applicable time limit, the date of receipt (whether by e-mail, registered mail or express courier) shall be considered as the date of filing.
5. Any written notices and communications from the Tribunal to the parties in relation to the proceedings shall be made by e-mail, registered mail or express courier:
 - (a) if addressed to the Appellant, to the e-mail or mailing address specified in accordance with Article 13(1)(l) or to such other address as the Appellant may have designated for the purpose by notice in accordance with this Article; or
 - (b) if addressed to the ESM, to the e-mail address specified in accordance with Article 14(2).

Article 27

Exclusion from Proceedings

1. If the Tribunal considers that the conduct of a party's counsel towards the Tribunal, the President, a member of the Tribunal or the Registrar is incompatible with the dignity of the Tribunal or with the requirements of the proper administrative of justice, or that such counsel uses his or her rights for purposes other than those for which they were granted, it shall so inform the person concerned. The Tribunal may inform the competent authorities to whom the person concerned is answerable, and a copy of the letter sent to those authorities shall be forwarded to the person concerned.

The Tribunal may at any time, having heard the person concerned, exclude that person from the proceedings by a reasoned order. Such order shall have immediate effect.

2. Where a party's counsel is excluded from the proceedings, the proceedings shall be suspended for a period fixed by the President in order to allow the party concerned to appoint another counsel.
3. If the Tribunal considers that the conduct of a party or its legal representative towards the Tribunal, the President, a member of the Tribunal or the Registrar is incompatible with the dignity of the Tribunal or with the requirements of the proper administration of justice, or that such party or its legal representative uses his or her rights for purposes other than those for which they were granted, it shall so inform the person concerned. The Tribunal may suspend the procedure.

4. Decisions under this Article may be rescinded by a reasoned order of the Tribunal.

Article 28

Special Forms of Procedure

The Full Tribunal shall deal with any matter which is not within the powers of the President to direct the proceedings of the Tribunal under Article 3(1) or is not specifically provided for in these Rules of Procedure, including joinder, legal aid, intervention, third-party opposition, the order in which cases are to be dealt with, or discontinuance of proceedings without adjudication.

Article 29

Amendment of Rules of Procedure

1. The Full Tribunal may amend any provision of these Rules of Procedure in consultation with the Managing Director, the General Counsel and the Secretary General of the ESM.
 2. Any amendment of these Rules of Procedure shall not be retroactive and shall not apply to any case then pending before the Tribunal, unless the parties and the Tribunal agree otherwise.
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