

Process for Handling Reports of Irregularities (“Whistleblowing Procedure”)

This Whistleblowing Procedure is adopted by the Managing Director of the European Stability Mechanism to regulate reporting of irregularities.

1. BACKGROUND

Article 17 of the ESM Code of Conduct contains the requirement for members of staff to report irregularities:

1. Members of staff shall report to the Compliance Officer any suspected or presumed incidents of fraud, illegal behaviour, serious misconduct or serious infringement of this Code (the “Irregularities”). All members of staff shall cooperate in any official investigation or audit of reported Irregularities.
2. The ESM shall ensure confidential treatment for and shall refrain from any retaliation or reprisal against any member of staff who makes in good faith a report of any Irregularities pursuant to Article 17 (1) above. In doing so, the ESM shall ensure that the member of staff who has made in good faith such a report enjoys assistance and protection in accordance with the ESM’s duty of care. It is understood that defamatory reporting may entail disciplinary measures against the defamer.

The ESM High Level Principles for Risk Management also sets a similar requirement: “Staff involved in risk management activities must act as whistleblowers when necessary”. However, this does not limit the reporting of irregularities to risk management staff – it is a requirement for all staff.

Irregularities (in singular, “Irregularity”) are as defined in Article 17 of the ESM Code of Conduct. The Compliance Officer (“CO”) can provide further clarification of the exact nature and scope of an Irregularity.

2. SCOPE

This Whistleblowing Procedure applies to:

- all members of ESM staff; and
- persons not employed by the ESM but forming temporarily part of the ESM’s workforce on a contractual basis with their employer and having a reporting line to a member of ESM staff.

Reports on Irregularities made by service providers or their staff will be accepted and handled in a similar fashion as set out in this Whistleblowing Procedure.

3. REPORTING AN IRREGULARITY

Generally, a report of an Irregularity (“Report”) shall be communicated to the CO. Reports which are communicated instead to another function of the ESM should be forwarded to the CO.

Reports are accepted in any form: in writing (hard copy or e-mail), or verbally, whether in person or over the phone. A template that can be used for the reporting is included in the Annex. It is preferred that the person who makes a Report (“Reporter”) chooses to report the Irregularity openly (i.e. to

allow identification of the Reporter), as in many cases additional information or clarification may be needed. It is understood, however, that in certain cases Reports will need to be submitted anonymously.

Reports will be registered and acknowledged by the CO to the Reporter without undue delay.

The content of Reports should be as comprehensive as possible. It is understood that some Reports may contain suspicions rather than confirmed facts or hard evidence. The more information a Report contains the easier it will be to establish whether the alleged Irregularity can be substantiated or not. A Report should include the following items:

- the description of the Irregularity observed or suspected (mandatory);
- the person(s) involved, including any potential witnesses;
- the documents potentially affected;
- the location; and
- any other information or document that could help an investigation.

The information provided must be accurate, truthful and given in good faith.

All Reports, including anonymous ones, will be accepted. However, anonymous Reports lacking sufficient information relating to the suspected Irregularity may not be accepted or processed further if they cannot reasonably be investigated.

Documents submitted will be treated as confidential. They will not be returned.

If the CO is the subject of a report, Reports should be communicated instead to the Chief Risk Officer (“CRO”) as the Head of Risk and Compliance, who will conduct the above steps of the process, and all remaining steps, in place of the CO.

4. REPORT HANDLING / INVESTIGATION

Initial assessment

The CO will first assess the content of the Report. If it does not relate to an Irregularity listed in Article 17 of the Code of Conduct or does not contain sufficient information to allow for an investigation to substantiate the allegation, the CO will close the matter immediately in consultation with the CRO, and will notify the MD. The rationale for the closure proposal will be documented in writing and filed with the original Report by the CO.

If the Report contains significant allegations of fraud, illegal behaviour, serious misconduct or serious infringement of the ESM Code of Conduct, the CO will inform the MD and the CRO, except in the following cases:

1. Should the MD be subject to serious allegations himself, the CO will inform the CRO, who will then inform the Chair of the Board Risk Committee (“BRC”) directly, who could appoint an independent external investigator or take other actions as appropriate.
2. Should the CRO be subject of a Report, the CO will inform the MD directly and ask for his decision on who should investigate the matter.

Unless in case of defamatory Reports, the name of the Reporter will not be included in any information provided to the MD, and it will not be given to individuals apart from those carrying out the investigation.

The CO will inform any individual subject to allegations in the Report (“Reported Person”) of the nature of the allegations made against them, and of the individuals/functions that have received information about the Report. However, in case there is a substantial risk that such notification would jeopardise ESM’s ability to investigate effectively the allegations or gather the necessary evidence, such notification may be delayed.

Investigation

Depending on the specific allegations in the Report, the CO will appoint an individual or a group of individuals (“the Investigator”) to carry out the investigation of the reported Irregularity without delay. Members of staff of the ESM or external experts can be appointed as the Investigator. Generally, the investigation of HR related misconduct (e.g. harassment, bullying) should be carried out by the Head of Human Resources in the lead, whereas for fraud, illegal behaviour and other serious misconduct and infringement of the Code of Conduct, Internal Audit should be in the lead of the investigation.

Investigations will be conducted in accordance with the principles contained in the “*International Financial Institutions Principles and Guidelines for Investigations*”, with the organisational arrangements tailored to ESM’s circumstances where necessary. During the investigation, and once the Reported Person has been informed that they are subject to allegations in a Report, they may (and, if they so request, they must) be heard by the Investigator. The Reported Person may enlist the aid of counsel of their own choosing when appearing for the hearing.

The Investigator may need assistance from other functions within the ESM (e.g. Legal, SG/IT, etc.). All staff in the ESM functions requested by the investigator should cooperate and, to the extent legally possible, provide the necessary information, data or documentation. While cooperating with other functions, the Investigator should strive not to reveal the identity of the Reported Person: for instance, assessment of specific legal circumstances might be requested without names being mentioned, or data and documents of a larger sample of individuals may be collected to disguise the purpose of the review.

The investigation may include in certain cases, and with due consideration of the immunity of ESM and its staff members, calling in the police or other law enforcement authorities.

The investigation should be conducted and concluded as promptly as possible, depending on the nature of the reported allegation and the circumstances of the case. The status of any investigations open for more than three months will be reported to the MD.

5. RESULT OF THE INVESTIGATION / FEEDBACK

The Investigator will summarise the findings relating to the case and indicate if the review has substantiated the allegations. The summary report will be submitted to the MD, or the Chair of the BRC for allegations against the MD, either for information (no Irregularity confirmed) or for further

decision-making (Irregularity confirmed or defamatory nature of the Report confirmed), with a copy to the CO for record-keeping purposes.

Unless the initial Report was submitted anonymously, the CO will provide feedback to the Reporter, which will include information as to whether an investigation was conducted and, if so, general statements on its outcome.

The Reported Person has the right to be informed of the outcome of the investigation and may request that the outcome will be made known, through the CO, to all members of staff of the ESM and to any external party involved in the investigation. Furthermore, the Reported Person may challenge, in accordance with Article 23(2) and (3) of the ESM Staff Rules, the outcome of the investigation.

6. CONFIDENTIALITY

The Report will be handled in an utmost confidential manner and, unless in cases of a defamatory Report in which even the identity of anonymous Reporter will be investigated, the identity of the reporter will be held confidential to the fullest extent possible. However, in order to conduct a successful investigation, it may become necessary to reveal the name of the Reporter to the Investigator. Should that be the case, the CO will advise the Reporter of this fact and the names/functions to whom the information will be provided (e.g. Internal Auditor or Head of HR). Should the Reporter not agree with loss of anonymity, they will be allowed to withdraw the report, unless after a preliminary assessment the CO deems the allegation sufficiently serious, an investigation may proceed anyway without being based on a Report.

7. RECORDS

The CO will maintain a log of all Reports, the actions performed, the status of investigations and any corrective actions. The log will not contain names either of Reporters or Reported Persons.

The CO will also file and keep confidential the original Reports and the documents produced throughout each investigation.

8. SAFEGUARDS, PROTECTION OF REPORTERS, DEFAMATORY REPORTING

The ESM will ensure that no retaliation will take place against any individual who files a Report in good faith and will actively protect such person. This protection means that the ESM will not discharge, demote, suspend, threaten, harass or in any manner discriminate against any reporter because of such a Report. Also, the ESM will not tolerate any form of threat, retaliation or other action against anyone who prepared or assisted in the preparation of a Report. Any breach of these safeguards should immediately be reported to the CO.

The information provided by the Reporter must be truthful and given in good faith. Staff members making defamatory reporting, however, must be aware that they may face disciplinary action.

Report of a Suspected Irregularity

What is the suspected irregularity? Please check at least one box below:

- Fraud
- Corruption
- Collusion
- Coercion
- Misconduct
- Other: (please describe) _____

Please describe the events, circumstances of the suspected irregularity. Please provide as much details as possible.

If you have supporting documentation please attach.

Contact information

ESM will accept your complaint even if you choose to remain anonymous. Please provide us with at least a contact number or an e-mail address so that we could contact you in case additional information or clarification became necessary.

First name: _____

Last name: _____

Contact number: _____

E-mail address: _____

Reports can be submitted to compliance@esm.europa.eu or sent to the attention of the Compliance Officer at the European Stability Mechanism, 6a Circuit de la Foire Internationale, L-1347 Luxembourg