

European Stability Mechanism



Whistleblower and Witness Protection Policy

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Version Control

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Compliance Officer, Legal Institutional	February 2021	1.0	The policy replaces the whistleblower procedures and now comprehensively sets out the framework of protection of whistleblowers and witnesses pursuant to art. 16 of the ESM Code of Conduct

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1. Objective

1. The ESM is committed to a culture of professionalism, integrity, respect, accountability, and non-discrimination, and to fostering and maintaining a work environment characterised by these values. The ESM is committed to and actively supports the right of members of staff to work in an environment free from Misconduct, including Integrity Violations and Behavioural Misconduct such as discrimination, harassment, bullying, and Retaliation.
2. The ESM raises awareness and understanding of Misconduct, including Integrity Violations and Behavioural Misconduct such as discrimination, bullying and Retaliation. To be able to investigate Misconduct, the ESM needs full information and the reporting of Integrity Violations and Behavioural Misconduct as these are detrimental to its assets, integrity, reputation and staff.
3. Whistleblower and Witness protection procedures are intended to safeguard this culture and the ESM pursues all reasonable steps to protect Whistleblowers and Witnesses and to ensure that they are not subject to Retaliation.
4. Article 16 of the Code of Conduct details the requirements for members of staff who become aware of Serious Misconduct, to report such Serious Misconduct. It also stipulates that the ESM will protect the identities of Whistleblowers and Witnesses both during and after investigations.
5. Unless otherwise provided in this Policy, capitalised terms have the meaning as assigned to them in the Annex to the Code of Conduct.

2. Whistleblowers and Witnesses

2.1. General

1. In order to address and investigate legitimate concerns or suspicions of Misconduct, including Integrity Violations or Behavioural Misconduct, the ESM has established this Policy, which provides the means to report such concerns, and, if so requested, to protect with the appropriate measures the Whistleblower or Witness against disclosure of their identity.
2. Members of staff are required to report any information concerning actual or suspected Integrity Violations and any member of staff in a supervisory position is required to report any actual or suspected Serious Misconduct, including discrimination, bullying and harassment. Members of staff not in a supervisory position are encouraged to report any information concerning actual or suspected Behavioural Misconduct. External Whistleblowers are encouraged to report any information concerning actual and suspected Integrity Violations, as well as actual or suspected Behavioural Misconduct. Such reporting shall be made to the Compliance Officer and may be made in confidence or anonymously. However, considering that anonymous reports are more difficult to investigate and that confidentiality is ensured as set out in Point 3 hereof, the ESM encourages both members of staff and external Whistleblowers to disclose their identity to the Compliance Officer who will take the measures necessary to protect their identity.

2.2. Scope of application

The Policy applies to:

- (a) all current members of staff regardless of the type of duration of their appointment, as provided in Article 16 of the Code of Conduct (Reporting of Misconduct);

- (b) former members of staff;
- (c) persons providing the ESM with services, including trainees, interims, consultants and suppliers contracted by the ESM,
- (d) other external persons, including visitors to the ESM, with information on suspected or known Integrity Violations and/or Behavioural Misconduct.

3. Implementation

1. The Compliance Officer is responsible for announcing the means for submitting reports of Serious Misconduct and will be in charge of receiving and reviewing the reports as set out in the Operating Procedure Handling Reports of Alleged Integrity Violations and Behavioural Misconduct (Operating Procedure A). Decisions on what to investigate and which investigative procedures to apply in a particular case come within the competence of internal audit, in accordance with the Operating Procedure Investigations (Operating Procedure B). In this context, internal audit, can, if needed, be assisted by external experts.
2. Whistleblower investigations are to be both organisationally and personally objective and independent. If there is a risk that this independence or objectivity may be called into question during a particular investigation, the Compliance Officer, after reviewing the facts, takes any necessary action to ensure that the required standards for independence and objectivity are fully respected.
3. Members of staff are required and external Whistleblowers are urged to cooperate in any investigation under the Policy.

4. Whistleblower Reporting by Members of Staff

4.1. Reporting

1. Members of staff are required to report incidents of suspected or known behaviour as described in paragraphs 2.1.2 above to the Compliance Officer, following the procedures set out in the Operating Procedure A. If the Compliance Officer is the subject of such report, such report is required to be made to the General Counsel, which will handle the report in accordance with the Operating Procedure A.
2. The Policy does not apply to:
 - (a) the reporting of information already in the public domain (e.g. newspaper articles, publicly available audits, unsubstantiated rumours and hearsay, matters of trivial nature, gossip or information not linked to the performance of duties);
 - (b) disagreements over legitimate policies, information for which specific rules are available to members of staff, such as performance issues and other personnel issues where a member of staff has a personal interest in the outcome, or personal disagreements or conflicts with other members of staff or third parties;
 - (c) disclosures that cannot be considered as reasonable or honest, such as abusive disclosures (e.g. repeated disclosures of alleged facts aimed merely at paralysing a service) or malicious, frivolous or potentially defamatory disclosures (e.g. false or unverifiable accusations with the aim of harming another person's integrity or reputation).
3. Members of staff are reminded that the reporting of an alleged incident in bad faith, particularly if it is based knowingly on false or deliberately misleading information, against another member of staff amounts to Misconduct (Article 16 Code of Conduct) and that in such cases, the Whistleblower or

Witness is not entitled to the protection provided by this Policy and will face disciplinary measures (Article 22 and 23 of the ESM Staff Rules).

4. External reporting of (suspected) Misconduct by members of staff is considered a breach of the duty of confidentiality as set out in Article 10 of the Code of Conduct, unless the member of staff can show that:
 - (a) such reporting is necessary to avoid:
 - (i) a significant threat to public health and safety;
 - (ii) substantive damage to the ESM; or
 - (iii) a violation of national or international law;
 - (b) the established internal mechanisms are inadequate because the member of staff has:
 - (i) reasonable grounds to believe that it is not possible to report the (suspected) Misconduct pursuant to the procedure set out in the Operating Procedure A because this would subject the member of staff to retaliation within the ESM;
 - (ii) reasonable grounds to believe that it is not possible to report the (suspected) Misconduct pursuant to the procedure set out in the Operating Procedure A as this would lead to the concealment or destruction of possible evidence for such Misconduct; or
 - (iii) previously reported, not on anonymous basis, the (suspected) Misconduct through the procedure set out in Operating Procedure A and the ESM has failed to inform the staff in writing of the status of the matter within six months of such report;
 - (c) the member of staff does not receive nor aims to receive any other benefit from any party for such external reporting.

4.2. Retaliation

1. Actions of Retaliation taken by a member of staff against a person who makes a Whistleblower report or a Witness statement in good faith, as described above, amount to Misconduct and a breach of the Code of Conduct.
2. Temporary and/or permanent measures that are necessary in order to protect a Whistleblower or Witness from Retaliation may be adopted. Such measures may include, but are not limited to: (i) taking reasonable steps to facilitate a transfer to another administrative unit, to the extent possible, taking into considerations the type of post that fits their profile and the needs of the different major administrative units; (ii) ensuring that the Whistleblower or Witness will not suffer any adverse consequences in the staff appraisal and promotion procedures.

5. Reporting by External Whistleblowers

1. Persons external to the ESM, with information on suspected or known Misconduct, involving the ESM's programmes and activities, are encouraged to report to the Compliance Officer.
2. The Compliance Officer will make information available on how external Whistleblowers may submit reports on Integrity Violations and Behavioural Misconduct. Operating Procedure A sets out the provisions on how information from external persons may be reported to the ESM and how the ESM will handle such incoming reports.
3. An external Whistleblower who makes a report to the Compliance Officer and external Whistleblowers and Witnesses who have cooperated with an investigation shall be protected from Retaliation by any

member of staff.

6. Rights of implicated members of staff

1. Members of staff implicated by reports of Integrity Violations or Behavioural Misconduct are informed of the allegations made against them as soon as possible, provided that provision of this information does not block, delay or risk impeding the investigation and does not expose the ESM to any financial or reputational damage.
2. Findings referring to a member of staff specifically by name will be made only after the completion of the investigation under the Policy, once such member of staff has had the opportunity to put forward their comments, in keeping with the principle of respect for the right to be given a fair hearing¹. After having heard the implicated member of staff, or after having requested the latter to put their case in writing if, for objective reasons, it is not possible to hear them directly, the Managing Director, where relevant with the assistance of internal or external experts, will decide on measures required, including disciplinary measures in accordance with Article 22 of the ESM Staff Rules.
3. Whistleblower and Witness statements must always be corroborated by sufficient other reliable probative evidence, including corroborative statements from another Whistleblower or Witness, that provides a factual foundation for the disciplinary and other measures proposed. Such evidence is disclosed to the member of staff suspected of Integrity Violations or Behavioural Misconduct and they are provided the opportunity to respond to such statements.

7. Protection of personal data

Given that the reporting of Misconduct and/or the ensuing procedure will involve the handling of personal data, such data is managed in keeping with the principles and rules provided for in the Personal Data Protection Policy.

8. Reporting, feedback and review of the Policy

1. The Compliance Officer reports on a quarterly basis to the Internal Risk Committee and on a yearly basis in the Compliance report on the volume and nature of Whistleblower reports and on the results of investigations undertaken. Whistleblowers will be provided with feedback, as appropriate, of actions taken in follow up to their report. The practical application and effectiveness of the Policy and of the Operating Procedures A and B will be evaluated and reviewed periodically.
2. The Policy shall be reviewed by the Compliance function as appropriate to take into account the experience with the Policy, and to reflect best practice.

9. Owner and entry into force

The Policy has been adopted by the Managing Director with effect from 4 February, 2021. Compliance and Internal Audit functions are responsible for implementing this Policy.

¹ Further details are provided in the Conflict Management brochure, as well as during regular awareness raising and training.