

Ethics Framework for the SSM

Implementation practices

1. Introduction

The Governing Council has adopted on 12 March 2015 Guideline ECB/2015/12 laying down the principles of an Ethics Framework for the Single Supervisory Mechanism¹. The principles laid down in Guideline ECB/2015/12 should be supplemented by a set of best practices on how to implement them. The purpose of these implementation practices is to give orientation to the ECB and the national competent authorities (NCAs) and to promote the harmonisation of the local rules and practices. Guideline ECB/2015/12, the current set of implementation practices and the internal rules and practices adopted by the ECB and the NCAs form together the Ethics Framework for the SSM.

Against this background, the Governing Council has approved the current implementation practices.

2. General

Implementation practice No 1 concerning the role and responsibilities of the ECB's and NCAs' decision making bodies

The ECB and the NCAs are recommended to define the role and responsibilities of the relevant decision-making bodies as follows: (i) implementing the Ethics framework for the SSM by adopting local rules and practices, (ii) determining the corporate and ethics culture at local level (“tone from the top” and “leading by example”) and (iii) ensuring compliance with the local rules by setting up a proper compliance framework at local level.

Implementation practice No 2 concerning the role and responsibilities of the operational management

¹ OJ L 135, 2.6.2015, p. 29

The ECB and the NCAs are recommended to define the role and responsibilities of the operational management as follows: (i) applying the local rules within their area of responsibilities, (ii) contributing to the communication of the Ethics Framework for the SSM and to the awareness raising and (iii) fostering compliance (“leading by example”).

Implementation practice No 3 concerning the role and responsibilities of staff

The ECB and the NCAs are recommended to specify in their local rules that staff is responsible for making themselves familiar with these rules and for complying with them. In case of doubt, they should proactively seek advice on the interpretation of the rules from the local compliance function.

Implementation practice No 4 concerning the compliance function

The ECB and the NCAs are recommended to define clearly the responsibilities of the local compliance function (which may be assigned to a self-standing unit or to different departments). The responsibilities of the compliance function could include (i) giving advice and guidance on the interpretation and application of the local rules, (ii) raising awareness and educating staff, (iii) identifying and assessing compliance risks, (iv) monitoring and checking compliance, (v) reporting of cases of non-compliance and possibly investigations and initiating the disciplinary follow-up, and (vi) steering or contributing to the drafting of the local rules and practices. When setting up the compliance function, the ECB and the NCAs are recommended to take account of the guiding principles concerning compliance and the compliance function in banks issued by the Basel Committee on Banking Supervision² and relevant international/European standards. The ECB and the NCAs should carefully consider the limits for outsourcing the compliance function taking into account that this is a “core risk management activity”.

Implementation practice No 5 concerning communication and awareness raising

For the purpose of raising awareness, the ECB and the NCAs may for example use the following tools: (i) induction sessions, (ii) (regular) training sessions, (iii) (regular) online-tests, (iv) communication via the intranet and/or brochures, (v) declarations to be signed by staff on a regular basis confirming that they are familiar with the applicable rules and willing to comply with them and (vi) publication of general guidelines and the advice given in individual cases.

Implementation practice No 6 concerning compliance monitoring

For the purpose of monitoring compliance with the rules on the prevention of misuse of inside information, the ECB and the NCAs may use different mechanisms, namely a pre-authorisation requirement and/or

² <http://www.bis.org/publ/bcbs113.pdf>

ex-ante or ex-post reporting requirements. The ECB and the NCAs, to the extent possible under national law, are recommended to supplement these mechanisms by compliance checks of all private financial transactions made by insiders. Such compliance checks should be possible even if there is no suspicion of non-compliance with the rules. The compliance checks may be undertaken on an ad-hoc basis and/or on a regular basis. They may focus on specific types of transactions, on a specific group of staff (having access to specific inside-information) or cover a certain percentage of staff determined by lot. The monitoring (including the compliance checks) should be done by the compliance function, possibly with the support of an external service provider.

The compliance checks should cover all relevant accounts which members of bodies or members of staff own on their own behalf or together with third parties or for which they have a power of attorney. Moreover, the local rules should define precisely which documents (e.g. account statements; purchase and sale notes) the persons, who are subject to compliance checks, must keep and for which period of time.

The conduct of compliance checks should be without prejudice to the possibility to carry out investigations/internal administrative inquiries (which include more intrusive measures) in case a person is suspect of having breached the applicable framework.

Compliance checks and investigations are to be carried out within the limits of the applicable data protection law and of the applicable rules on banking and professional secrecy.

Implementation practice No 7 concerning the reporting of compliance incidents

The ECB and the NCAs are recommended to define clearly how their staff should report cases of non-compliance within their organisation. In addition to the regular reporting channels (e.g. via the local management to the compliance function), the local rules of the ECB and the NCAs should allow for “whistleblowing”, i.e. the direct reporting to the compliance function or to a third body if the regular reporting channels cannot be used. Moreover, the local rules should specify that staff shall not suffer any prejudicial effects on the part of their employer as a result of having reported a case of non-compliance, provided that they acted reasonably and in good faith. Moreover, the ECB and the NCAs should ensure that the name of the reporting member of staff is kept confidential unless it is required by law to disclose it. While confidentiality of the person’s identity must be guaranteed, anonymous reporting should not be encouraged.

3. Rules on the prevention of misuse of inside information

Implementation practice No 8 concerning insiders

The ECB and the NCAs are recommended to include all persons who have access to inside information (as well as information about their status) in a register. The register should be maintained by an

organisational function which is independent from the operational units having access to inside information. The register needs to be updated on an on-going basis. To identify the relevant persons, the ECB and the NCAs should define carefully which information needs to be classified as inside information and the related information flows. The register of insiders should be interlinked with the rights to access electronic documents and the rules on the storage and distribution of hardcopies to ensure that only persons with insider status get access to inside information. The rules should also specify how staff is notified of their status in due time.

The ECB and the NCAs that make all their staff subject to specific restrictions do not need a separate register of insiders but are still required to ensure that inside information is only accessible on a “need-to-know basis”.

Implementation practice No 9 concerning restrictions of specific critical private financial transactions

For the purpose of restricting critical private financial transactions, the ECB and the NCAs may choose one or more of the following mechanisms: Prohibitions (restricted lists), prior authorisation, ex-ante or ex-post reporting or embargo periods. The restrictions should be effective, efficient, proportionate and transparent. For all types of restrictions, *de minimis* thresholds may be applied to ensure proportionality.

The ECB and the NCAs are recommended to require their staff participating in Joint Supervisory Teams or other joint teams to refrain from trading shares and bonds issued by credit institutions subject to the supervision of the ECB and derivatives related to such shares and bonds.

4. Conflicts of interest

Implementation practice No 10 concerning the checking of conflicts of interest at the recruitment stage

In case the ECB and the NCAs recruit candidates with professional experience for specific positions they are recommended to establish procedures to examine whether candidates considered for appointment may be exposed to a conflict of interest arising from previous occupational activities or personal relationships. For that purpose, the ECB and the NCAs are recommended to specify in their rules (i) that the absence of a conflict of interest or appropriate mitigation thereof is a pre-condition for an appointment; (ii) that candidates are obliged to indicate during the application procedure any actual or potential conflict of interest that may arise from previous occupational activities or personal relationships and (iii) that the selection committee/appointing manager is obliged to assess potential conflicts of interest and to decide, possibly after consultation of the compliance function, on appropriate measures to avoid the conflict.

Implementation practice No 11 concerning post-employment restrictions

The ECB and the NCAs to the extent possible under national law, are recommended to adopt proportionate cooling-off periods for members of bodies as well as staff at managerial and expert level that intend to work for a credit institution in the supervision of which they were involved or for direct competitors of such credit institution. For members of bodies and senior staff the cooling-off period should be at least six months if they intend to work for a credit institution for the supervision of which they were responsible.

Implementation practice No 12 concerning conflicts of interest arising from occupational activities taken up during unpaid leave

The ECB and the NCAs, which allow their staff to take unpaid leave to take up an occupational activity, are recommended to establish a procedure to check potential conflicts of interest before granting unpaid leave. The assessment of conflicts of interest should be consistent with the assessment of conflicts of interest arising from post-employment activities.

5. Rules on the acceptance of advantages

Implementation practice No 13 concerning the reporting of advantages

The ECB and the NCAs are recommended to adopt internal rules requiring staff to report either to their line management or to the compliance function advantages which could not be rejected as well as attempts of third parties to offer advantages. The ECB and the NCAs may limit the reporting obligation to advantages exceeding a specific threshold or a symbolic value. The ECB and the NCAs are also recommended to specify the purpose of collecting the data, the related access rights and the retention period in accordance with the applicable data protection law.