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EBA-2019-D-2666

30 October 2019

Subject: Approval of an occupational activity for EBA Executive Director

Dear Ms Kothari, Mr Haar, Ms Leutner

Thank you for your letter dated 8 October 2019 in which you set out a number of questions concerning the approval given to the EBA's Executive Director, Adam Farkas, to take up a new occupational activity as Chief Executive Officer of the Association for Financial Markets in Europe (AFME).

As you note, such approvals are subject to the requirements of Article 16 of the Staff Regulations and the Conditions of Employment of Other Servants. That Article is supplemented by implementing rules set out in a Commission decision on occupational activities after leaving the service¹. A copy of the principal provisions is set out in the annex to this letter for your convenience.

Let me comment on the specific issues outlined in your letter:

Please explain the process of how the decision has been made within the EBA to give approval to Mr. Farkas' appointment

The decision was taken in line with the EBA's Policy on Independence and Decision Making Processes for avoiding Conflicts of Interests (Conflict of Interest Policy) which was adopted by the Board of Supervisors.

¹ Commission Decision of 29.6.2018 on outside activities and assignments and on occupational activities after leaving the Service (C(2018) 4048 final)

In line with that policy, the decision was taken by the Board of Supervisors on the basis of a proposal from the Management Board after consulting the Joint Committee². Recent precedents of similar decisions adopted by the Commission in relation to senior officials were taken into account.

Formal minutes of the meeting of the Board of Supervisors in which the approval has been given

Due to the time limits within which decisions under Article 16 are required to be taken, the approval of the Board of Supervisors was given in written procedure following discussions in the Management Board. The minutes of the Management Board discussions are still being finalised and will be published on our website at <https://eba.europa.eu/about-us/organisation/management-board/meetings-and-minutes> when they become available. A discussion was held in the Board of Supervisors meeting on 19 September 2019 and the minutes can be found at <https://eba.europa.eu/about-us/organisation/board-of-supervisors/meetings-and-minutes>; please see paragraphs 14 and 15.

Reasons why the EBA considers that the approval is in line and not violating EU staff regulations

As you note in your letter, Article 16 of the Staff Regulations and Article 21(6) of Commission Decision on occupational activities after leaving the service require the EBA, in principle, to prohibit Mr Farkas from engagement in lobbying or advocacy vis-à-vis EBA staff for his future employer on matters for which Mr Farkas was responsible during the last three years in the service.

Since Article 16 of the Staff Regulations imposes a notification requirement for 24 months after leaving the service, 24 months is in practice the longest period for which such restrictions are applied. The EBA therefore exceeded the requirement of the Staff Regulations and Commission Decision and imposed this restriction for 24 months rather than the 12 months provided for in the Commission Decision.

The EBA went further and applied the restriction in Article 21(3)(a) of the Commission Decision, by requiring Mr Farkas to refrain for 18 months after leaving the EBA from assisting AFME members, and otherwise contributing to AFME's activities on topics directly linked to work carried out by him during his last three years of service. Taking into account that Mr Farkas has not been involved in preparation of EBA regulatory or supervisory policies following the tendering of his resignation on 2 August 2019, the EBA imposed this restriction for 18 months, effectively ensuring a 'cooling off' period of a total of 24 months.

Article 21(3) of the Commission Decision requires the Board of Supervisors to "define an appropriate balance between the need to ensure integrity through temporary prohibitions and

² Article 16 requires the Joint Committee to be consulted. The Joint Committee is a committee of EBA staff members and in accordance with the requirements in paragraph 2 of Annex II to the Staff Regulations, the committee chairperson is appointed by the Executive Director, and members and alternates appointed in equal numbers by the Executive Director and by the Staff Committee.

restrictions and the need to respect the former staff member's fundamental right to engage in work and to pursue a freely chosen or accepted occupation".

While recognising the substantial conflict with the legitimate interests of the EBA, taking into account the factors set out in Article 21(2) of the Commission Decision, the EBA considers that it has achieved the balance required through imposing the significant restrictions described.

Activities that Mr Farkas cannot work on for the first 18 months at AFME

The EBA's decision states that the work carried out by Mr Farkas in his last three years of service includes in particular: the EU impact and implementation of the finalised Basel III standards; prudential policies relating to the fundamental review of the trading book, non-performing loans and securitisation; the EBA stress test; ML/TF risks in the prudential supervisory process; and secure customer authentication and API implementation under the Payment Services Directive 2. In case of doubt about whether a topic falls within the restriction, Mr Farkas is required to contact the EBA.

Monitoring and enforcement

Mr. Farkas is the addressee of the decision and therefore the primary responsibility for ensuring that the decision is properly enforced rests with him. We also consider that it will not be in the interests of Mr Farkas and AFME to breach the requirements given the reputational risks to which this would give rise. Nevertheless, the EBA recognises the risks to its own reputation and where we identify potential breaches of the requirements, we will pursue those concerns. EBA staff have also been informed of the restrictions imposed on Mr Farkas and have been instructed to report professional contacts by Mr Farkas on behalf of AFME through their line management. EBA staff will be reminded of this obligation through the regular ethics training provided.

I trust that this response addresses the concerns that you raise and demonstrates the care that the EBA took over this decision, its proper implementation, and our concern for ensuring that the EBA continues to be seen to be acting with integrity and that the interests of the EBA and of the EU are protected.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'José Manuel Campa', is located below the text 'Yours sincerely,'.

José Manuel Campa

Annex

Article 20

Obligations under Article 16 of the Staff Regulations

1. Under Article 16, second paragraph, of the Staff Regulations, all staff members, including former staff members, must inform the Commission beforehand of their intention to engage in an occupational activity, whether gainful or not, by using a specific form. This obligation applies for two years after leaving the service. If that activity is related to the work carried out by the staff member during the last three years of service and could lead to a conflict of interest with the legitimate interests of the institution, the Appointing Authority may, having regard to the interests of the service, either forbid him or her to undertake it or give its approval subject to any conditions it thinks fit. Moreover, the staff member shall declare in the specific form that, the provisions of Article 11a have at all times been complied with, including when negotiating the terms and conditions of the envisaged activity while being in active employment.

2. Taking up employment at a European Union institution or body in the meaning of the Treaty on European Union and/or the Staff Regulations does not trigger the obligation to inform the Commission, as described in paragraph 1, as engaging in this activity does not lead to leaving the service of the Union for the purpose of applying Article 16, second paragraph, of the Staff Regulations. This is without prejudice of Article 40 of Annex VIII of the Staff Regulations.

3. The activities expressly listed as examples under Article 4, paragraph 3, do not constitute occupational activities within the meaning of Article 16, second paragraph, of the Staff Regulations provided that:

- (a) they do not give rise to lobbying or advocacy vis à vis staff of their former institution;
- (b) are not remunerated;
- (c) are carried out in the staff member's personal capacity.

4. The occupational activities which are not in any way directly related to the work of the former staff member in the Commission, cannot by their very nature, give rise to a conflict of interest with the legitimate interests of the Commission. They shall however be notified to the Appointing Authority using the specific form referred to in paragraph 1.

Article 21

Information on occupational activities pursuant to Article 16 of the Staff Regulations

1. When leaving the service of the Commission the staff member must sign a declaration confirming that he or she is aware of the obligations under Article 16, second paragraph, of the Staff Regulations.

2. On the basis of the specific form referred to in Article 21(1), the Appointing Authority shall assess whether the notified activity could lead to a conflict with the legitimate interests of the institution. When assessing the possibility of any actual or potential conflict of interest, the Appointing Authority takes into account factors such as:

(a) any relation between the occupational activity and the work carried out by the former staff member during the last three years of service;

(b) whether the occupational activity would involve working on specific files for which the former staff member was responsible during the last three years of service;

(c) whether the occupational activity would risk harming the reputation of the former staff member and the Commission, for example by retroactively casting doubt on the former staff member's impartiality while he or she was still in service, thereby tarnishing the Commission's image;

(d) the quality of a future employer (for example whether it is a public authority or a private/commercial company) or the situation of self-employment;

(e) whether the envisaged activity would involve representing outside interests vis-à-vis the institution;

(f) whether or not the envisaged activity is remunerated.

3. The Appointing Authority defines an appropriate balance between the need to ensure integrity through temporary prohibitions and restrictions and the need to respect the former staff member's fundamental right to engage in work and to pursue a freely chosen or accepted occupation. In particular, the Appointing Authority may, during the two year period after the staff member has left the service:

(a) prohibit the former staff member from dealing with files, cases or matters related to the work carried out by him or her during his or her last three years of service, including related or subsequent cases and/or court proceedings; and/or

(b) impose a 'cooling off period' excluding the former staff member from, for example, professional contacts with former colleagues or from representing opposing parties.

4. Staff members shall inform the Commission of their intention to engage in an occupational activity at least 30 working days before the envisaged starting date. Staff members shall not start the activity before receiving either explicit or implicit acceptance, whichever comes first.

5. The Appointing Authority shall, within 30 working days after being informed of the occupational activity, notify its decision, after consulting the Joint Committee as provided in Article 16, second paragraph of the Staff Regulations. Failure by the Appointing Authority to notify its decision within the 30 day period constitutes implicit acceptance of the occupational activity. If a declaration submitted by the applicant is incomplete, the Commission shall request additional information and the 30 day period is suspended until the requested information is provided.

6. For former senior officials³, the Appointing Authority shall, in principle, prohibit them during the first 12 months after leaving the service from engaging in lobbying or advocacy, vis-à-vis staff of their former institution, on behalf of their business, clients or employers on matters for which they were responsible during the last three years in the service. This is without prejudice to a possible “cooling off period” as in paragraph 3b).

7. The Commission shall publish information annually on how the provisions regarding former senior officials are implemented, including a list of the cases assessed having due regard to the rules on the protection of personal data as contained in Regulation (EC) No 45/2001 of 18 December 2000.

³ The term ‘senior officials’ refers to officials occupying functions corresponding to the basic post of Director-General in grades AD16 or AD15 as well as those occupying functions corresponding to the basic post of Director in grades AD15 or AD14. Basic post in this context, and in accordance with Annex 1 of the Staff Regulations, means all positions falling within the function group of Director-General or Director, as the case may be.