

EBA JC 2019 01

21 08 2019

Confidential

Opinion of the EBA's Joint Committee

Introduction and legal basis

1. Pursuant to Article 16 of the EBA staff regulations, *“an official shall, after leaving the service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits. Officials intending to engage in an occupational activity, whether gainful or not, within two years of leaving the service shall inform their institution [...]”*.
2. On 2 August 2019, Mr. Adam Farkas, Executive Director of the EBA, informed the Chairperson of the EBA of his intention to leave the EBA in order to take up a position of Chief Executive Officer (CEO) of the Association for Financial Markets in Europe (AFME) (Annex 1).
3. In application of Article 3 of the EBA Decision on the appointment of the Joint Committee (EBA DC 193/2017) and Article 1 of the EBA Decision extending the mandate of the Chairperson, the members and the alternates of the Joint Committee (EBA DC 282/2019), the Joint Committee of the European Banking Authority (JC of the EBA) was requested on 13 August 2019 by the Head of the Human resources Unit to provide an opinion on the potential conflict of interests raised by Mr. Adam Farkas' new activity with regards to Article 16 of the EBA Staff Regulations.
4. The competence of the JC of the EBA to deliver an opinion is based on Article 16 of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (Staff Regulations (SR)),¹ as applicable by analogy to members of temporary staff of the EBA pursuant to Article 11 of the Conditions of Employment of other Servants of the European Communities.
5. The Joint Committee notes that in accordance with the EBA Conflict of Interest Policy Decision (EBA DC 104rev1), this potential conflict of interest shall be submitted to the Advisory Committee on Conflicts of Interests (ACCI). The ACCI shall provide an advice to the EBA's Management Board on the working conditions of the Executive Director until the end of service.

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1422381799065&uri=CELEX:01962R0031-20140501>

6. In accordance with the Staff Regulations and the EBA DC 193/2017 and EBA DC 282/2019, the EBA Joint Committee has adopted this opinion.

Background information

7. Mr. Adam Farkas is the Executive Director of the EBA since 01 April 2012. His responsibilities, listed in his job description (Annex 2), are set out mainly by the Regulation (EU) No 1093/2010,²(EBA Regulation) as follows:

- *the Executive Director shall be in charge of the management of the Authority and shall prepare the work of the Management Board;*
- *the Executive Director shall be responsible for implementing the annual work programme of the Authority under the guidance of the Board of Supervisors and under the control of the Management Board;*
- *the Executive Director shall take the necessary measures, notably the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Authority, in accordance with this Regulation;*
- *the Executive Director shall prepare a multi-annual work programme, as referred to in Article 47(2) of the EBA Regulation,*
- *each year, by 30 June, the Executive Director shall prepare a work programme for the following year, as referred to in Article 47(2) of the EBA Regulation;*
- *the Executive Director shall draw up a preliminary draft budget of the Authority and shall implement the budget of the Authority pursuant to Articles 63 and 64 of the EBA Regulation;*
- *each year the Executive Director shall prepare a draft report with a section on the regulatory and supervisory activities of the Authority and a section on financial and administrative matters;*
- *the Executive Director shall exercise in respect to the Authority's staff the powers laid down in Article 68 of the EBA Regulation and manage staff matters.*

8. According to Article 64(1) of the EBA Regulation, *the Executive Director shall act as authorizing officer and shall implement the Authority's budget.*

9. Furthermore, some of the tasks of the Executive Director are further specified by the Decisions of the EBA (e.g. Rules of procedure) adopted by the Board of Supervisors.

² Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, OJ L 331, 15.12.2010, p. 12.

Joint Committee assessment

10. Article 16 of the SR states that *“if that activity is related to the work carried out by the official during the last three years of service and could lead to a conflict with the legitimate interests of the institution, the appointing authority may, having regard to the interests of the service, either forbid him from undertaking it or give its approval subject to any condition it thinks fit”*.
11. The Executive Director is pursuant to Article 51(2) of the EBA Regulation appointed by the Board of Supervisors and so the BoS is considered to be the appointing authority for the purpose of Article 16 of the SR.
12. The Joint Committee notes that, pursuant to the wording of Article 16 of the SR, its opinion has to be based on the information provided by Mr. Farkas. The Joint Committee therefore relies on Mr. Farkas having fulfilled his responsibilities to have provided full and complete information for the purposes of Article 16 of the SR.
13. Mr. Farkas has notified that his duties as CEO of AFME would be to advise its Board and prepare its work, to provide overall management of AFME’s policy activities and operations, to manage its budget and staff and to represent AFME publicly at conferences and seminars.
14. AFME is an industry body representing global and European banks and other significant capital market players. It is providing expertise and comments on regulatory and capital market issues. For instance, AFME has regularly provided comments during public consultations on technical standards (e.g. regulatory technical standards, implementing technical standards, guidelines) developed by the EBA.
- 15.

-

-

-

-

-

-

-

16. Mr. Farkas notes that during his work at the EBA, he had occasional meetings with AFME senior management (Chair and CEO) and policy experts in relation to regulatory policy matters. He was also invited to participate to AFME policy committees meetings to discuss regulatory policy issues. These policy discussions mainly involved prudential regulatory and supervisory issues affecting banks with significant wholesale activities in Europe. These meetings have been disclosed in the EBA public meeting register.

17. The Joint Committee considers that AFME activities are closely related to the tasks performed by Mr. Farkas as Executive Director of the EBA. It is therefore the opinion of the Joint Committee that the information presented by Mr. Farkas suggests that taking up the position of AFME's CEO creates potential conflicts with the legitimate interests of the EBA.

18. In order to mitigate potential conflicts with the legitimate interests of the EBA, the Joint Committee suggests the application of the following measures:

- During 24 months after leaving the service, Mr. Farkas should not be allowed to engage in lobbying or advocacy vis-à-vis staff of the EBA on matters for which he was responsible during the last three years of service as Executive Director of the EBA;
- Mr. Farkas should also be required, during 24 months after leaving the service, to abstain from having professional contacts on behalf of AFME with his former colleagues of the EBA;
- Mr. Farkas should refrain from any unauthorised disclosure of information received in line of duty during his work at the EBA, unless that information has already been made public or is accessible to the public (Article 17 of Staff Regulations), and, in this context, refrain from

exploiting insights of confidential nature in policy, strategy or internal processes that he may have acquired in the line of service and that have not yet been public or are not commonly available in the public domain.

19. These measures shall be communicated to all EBA staff who shall have a duty to report to their line managers any professional contact with Mr. Farkas during the 24 months after he leaves the service.

20. Finally, Mr. Farkas should be reminded to fulfil the specific obligations stemming from Articles 16 and 17 of the Staff Regulations, from Article 70 of the EBA Regulation and from the Decision of the Management Board of the EBA on professional secrecy (EBA DC 004).

Done at Paris, 21 08 2019

[signed by the Chair and the Members of the Joint Committee]

Annexes:

- Annex 1 : Notification of an engagement in an occupation after leaving the European Banking Authority signed on 2 August 2019 by Adam Farkas
- Annex 2: Job description of EBA Executive Director
- Annex 3:
- Annex 4: Confidentiality obligations for leavers form

Annex 1

[Notification of an engagement in an occupation after leaving the European Banking Authority signed on 2 August 2019 by Adam Farkas]

Annex 2

[Job description of Executive Director of Adam Farkas]

Annex 3:

▪

▪

▪

▪

▪

▪

▪

▪

▪

▪

▪

▪

▪

▪

Annex 4

Title
 Organisation
 Address
 Address
 Address

DD Month YYYY

Subject: End of employment at the European Banking Authority

Dear Mr / Mrs xxx

As you are now leaving the European Banking Authority (EBA or Authority) we would kindly remind you of your specific obligations connected with the end of your employment at the EBA.

Certain types of information that you will inevitably carry in your memory shall be pursuant to the Staff Regulation (Article 17) ³ considered confidential and treated with discretion. This kind of information is of great value to the EBA and, in accordance with the applicable rules the Authority has the right to protect it from disclosure to others. Please be also aware of the Decision of the Management Board on Professional Secrecy [Decision on Professional Secrecy or EBA DC 004] applicable to the EBA staff.

We would like to remind you that the provisions of the Staff Regulations continue to bind you even after you leave the service.

In addition, Article 70 of Regulation (EU) No 1093/2010 provides that Members of the Board of Supervisors and the Management Board, the Executive Director, and members of the staff of the Authority including officials seconded by Member States on a temporary basis and all other persons carrying out tasks for the Authority on a contractual basis shall be subject to the requirements of professional secrecy pursuant to Article 339 Treaty on the Functioning of the European Union⁴ and the relevant provisions in Union legislation, even after their duties have ceased.

You are, of course, free to use your skills acquired in the course of your employment with the Authority, as long as such use does not interfere with your obligation of confidentiality.

³ Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community

<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1422381799065&uri=CELEX:01962R0031-20140501>

⁴ Treaty on the Functioning of the European Union

In the course of your work with the Authority you have had access to confidential and commercially sensitive information. All such information is intended as non-public information, whatever the medium, the release of which would be prejudicial to the interests of the EBA, Member States, EU institutions or bodies.

Without intending to provide you with an exhaustive list of the kinds of information that you are obliged to maintain in confidence (Articles 16 and 17 of the Staff Regulation) I would like to call special attention to all the information protected under the following criteria:

- Protection of the individual and privacy,
- Protection of confidentiality as requested by natural or legal persons that supplied the information or as required by the legislation of the Member States that provided the information,
- Protection of the public interest, international relations, court proceedings, inspections and the financial interests of the Authority, and
- Protection of the Authority's interest in the confidentiality of its proceedings.

On some of the above areas you may have been directly involved and on others you may have had access to information from meetings, minutes, internal documents and from your colleagues. I am sure that you will recognise other confidential information not specifically listed above.

I also wish to remind you that any material or documents you prepared in the course of employment with the Authority are the property of the Authority (Article 18 of the Staff Regulation).

Moreover I would like to remind you that pursuant to Article 16 of the Staff Regulation and Article 4 of the Decision on Professional Secrecy you are kindly requested to inform me if you should intend to engage in an occupational activity, whether gainful or not, within two years of leaving the service.

I am sure that you are aware of the trust that has been placed in you and our expectation that you will conscientiously uphold this trust.

Should it be necessary the Authority would have to take all necessary steps to protect its interests. I would be happy to discuss any questions on confidentiality you may have in the future.

Before leaving the service I ask you to sign and return the duplicate copy of this letter to acknowledge its receipt and that you have read and understood your obligations.

Finally, allow me to take the opportunity to thank you for your contribution to the EBA work and wish you all the best in your next engagements.

Yours sincerely

Signatory

CC:

Encl: EBA DC 004 12 January 2011