

EBA/DC/2019/289

12 September 2019

EBA Restricted

# Decision of the European Banking Authority

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of 12 September 2019

concerning restrictions on engagement in an occupational activity

**Addressed to:** Adam Farkas, Executive Director, European Banking Authority (the “Staff Member”)

**Notification of intention to engage in occupational activity as Chief Executive Officer of Association for Financial Markets in Europe (AFME) (the “Activity”)**

## The Board of Supervisors

**Having regard to** 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<sup>1</sup>, in particular Article 68(3) thereof,

**Having regard to** Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials (Staff Regulations) and the Conditions of Employment of Other Servants (CEOS) of the European Economic Community and the European Atomic Energy Community<sup>2</sup>, in particular Articles 16 and 17 of the Staff Regulations,

## Whereas:

- (1) On 2 August 2019, the Staff Member informed the Chairperson 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). The Staff Member submitted his resignation letter to HR on the same date.
- (2) In his notification, the Staff Member mentions 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

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<sup>1</sup> OJ L331, 15.12.2010, p. 12.

<sup>2</sup> OJ P 045 14.6.1962, p. 1385.

activities and operations, to manage its budget and staff and to represent AFME publicly at conferences and seminars.

- (3) 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.
- (4) Taking into account the factors specified in Article 21 of the Decision on outside activities and assignments and on occupational activities after leaving the Service, applied by analogy to the EBA, the duties of the CEO of AFME relate to the work of the Executive Director during the last three years of service at the EBA and could lead to a conflict with the legitimate interests of the EBA.
- (5) In accordance with Article 16 of the Staff Regulations, and balancing 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 as referred to in Article 21 of the Decision on outside activities, it is therefore necessary to determine whether to forbid the Staff Member from undertaking the intended new occupational activity, or to establish the conditions under which the EBA gives its approval.
- (6) Article 21 of the Decision on outside activities establishes that former senior officials shall, in principle, be prohibited 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.
- (7) The potential conflict of interest between the activities of the Executive Director and the proposed occupational activity is very significant but can be managed by imposing appropriate conditions on approval but it is necessary for those conditions to go beyond the minimum conditions to be applied to senior officials. In particular the period for which the restriction on lobbying the EBA applies should be extended, and the Staff Member should be restricted in being involved in matters relating to policy issues on which the EBA has been active in the last three years of service.
- (8) The Board of Supervisors is the Appointing Authority for the Executive Director and therefore responsible for the adoption of decisions under Article 16 of the Staff Regulations. The Board of Supervisors has received and taken into account the opinion of the Joint Committee.
- (9) Taking into account the opinion of the Advisory Committee on Conflicts of Interest, the potential conflict of interest extends to the performance of the activities of the Executive Director during the six month notice period applicable under the Staff Regulations and CEOS. It is necessary to determine appropriate requirements to manage that potential conflict of interest while the Staff Member remains in the service of the EBA. Having regard to the risk of conflict of interest with the ongoing operational needs of the EBA following its change of seat, the appointment of a new Chairperson, and the implementation of the ESAs Review, it is appropriate for the Staff Member to perform his administrative and operational functions for three months from the date of resignation provided that the Staff Member ceases being

involved in the preparation of the EBA's prudential and supervisory policies, and subsequently is placed on gardening leave for the remainder of the notice period.

(10) This decision should take effect immediately in order to establish quickly the measures needed to manage the potential conflict of interest.

**Has decided as follows:**

#### **Article 1 – Restrictions while in the service of the EBA**

1. The Staff Member's responsibilities shall be limited to organisational and operational matters. In particular, the Staff Member shall not participate in the preparation of EBA regulatory and supervisory policies and shall not attend discussions in the Management Board, Board of Supervisors or Joint Committee of the ESAs on such items. In the case of doubt in relation to a particular activity, the Staff Member shall consult the Chairperson who shall determine the appropriate role for the Staff Member in relation to that activity.
2. The Staff Member shall not access EBA information that is outside the scope of the Operations Department and the Accounting function.
3. The Staff Member shall not represent the EBA externally except on the instruction of the EBA Chairperson or on the express request of the European Parliament, the Council or the European Commission.
4. The Staff Member shall by 31 October 2019 delegate his functions to one or more Directors or Heads of Unit, including in particular the following:
  - a. the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the EBA, in accordance with Regulation (EU) No 1093/2010;
  - b. the powers conferred on the appointing authority by the Staff Regulations and on the authority entitled to conclude contracts by the Conditions of Employment of Other Servants and the management of staff matters;
  - c. the role as authorising officer under the financial rules applicable to the EBA.
5. From 1 November 2019 until the expiry of the Staff Member's notice on 31 January 2020 the Staff Member shall not attend the EBA's premises except upon request of the Chairperson, and shall cease to have access to EBA systems.

#### **Article 2 – Restrictions after leaving the service of the EBA**

1. The Appointing Authority gives its approval to the Staff Member to carry out the Activity, subject to the conditions set out in this Article.


2. The Staff Member shall not, for 24 months after leaving the service of the EBA, engage in lobbying or advocacy of the EBA or its staff on matters for which he was responsible during the last three years of service.
3. The Staff Member shall not, for 24 months after leaving the service of the EBA, have professional contacts with EBA staff on behalf of AFME.
4. The Staff Member shall for 18 months after leaving the service of the EBA refrain 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. This 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, the Staff Member shall contact the EBA.
5. The Staff Member shall not, without authorisation, disclose information received in the line of duty unless that information has already been made public or is accessible to the public (Article 17(1) Staff Regulations). The Staff Member shall not exploit insights of a confidential nature in policy, strategy or internal processes that the Staff Member has acquired in the line of duty and that have not been made public or is otherwise accessible to the public.

### Article 3 – Implementation

The restrictions in this decision will be communicated to EBA staff who will be required to report to the Chairperson any contacts with the Staff Member after he has left the service of the EBA.

This Decision enters into force immediately.

Done at Paris, 12 September 2019



José Manuel Campa

Chairperson  
For the Board of Supervisors