

EBA JC 2020 01

05 05 2020

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 18 April 2020, Mr. Adam Farkas, Executive Director of the EBA until the 31 January 2020 and currently CEO of the Association for Financial Markets in Europe (AFME), informed the Chairperson of the EBA of his intention to accept an appointment as non-executive Board Member of TheCityUK¹ (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 EBA Joint Committee (EBA JC) was requested on 20 April by the Head of the Legal 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)),² 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. In accordance with the Staff Regulations and the EBA DC 193/2017 and EBA DC 282/2019, the EBA JC has adopted this opinion.

¹ <https://www.thecityuk.com/>

² <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1422381799065&uri=CELEX:01962R0031-20140501>

Background information

6. Mr. Adam Farkas was the Executive Director of the EBA from the 16 April 2011 until the 31st of January 2020. In this capacity, his responsibilities, listed in his job description (Annex 2), were set out mainly by the Regulation (EU) No 1093/2010,³ (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.*

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

8. 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.

9. On 2 August 2019, Mr. Adam Farkas 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). On 13 August 2019, the EBA JC was requested by the

³ 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.

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.

10. In its Opinion 2019/01 of 28 August 2019 (Annex 3), the EBA JC considered that the AFME activities were closely related to the tasks performed by Mr. Farkas as Executive Director of the EBA and that taking up a position of AFME's CEO created potential conflicts with the legitimate interests of the EBA. Therefore, in order to mitigate those potential conflicts, the EBA JC suggested the application of specific conditions in order to approve Mr. Farkas taking up a position at AFME. In particular, the EBA JC suggested that "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; [that] 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; [and that] 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."

11. In its Decision of 12 September 2019 (Annex 4), the EBA Board of Supervisors underlined the necessity to set those conditions beyond the minimum to be applied to senior officials and decided that :

- "[Mr. Farkas] 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.
- [Mr. Farkas] shall not, for 24 months after leaving the service of the EBA, have professional contacts with EBA staff on behalf of AFME.
- [Mr. Farkas] 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.
- [Mr. Farkas] 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.”

EBA Joint Committee assessment

12. 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”*.
13. 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 the appointing authority for the purpose of Article 16 of the SR.
14. The EBA JC 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 EBA JC therefore relies on Mr. Farkas to have fulfilled his responsibilities to have provided full and complete information for the purposes of Article 16 of the SR.
15. Mr. Farkas has notified that his membership of the Board of the TheCityUK is directly related to his current executive position at AFME, as AFME is a member of TheCityUK. Mr. Farkas further explained that this non-executive role is part of the accountability framework of TheCityUK to its members. Referring to the Board Charter of TheCityUK⁴, he noted that non-executive members may also be appointed to the various board committees that are described in the Board Charter of TheCityUK and that he does not have further specific information on any tasks or responsibilities the non-executive role would entail. However, he underlined that the non-executive board position is not remunerated, and does not involve any participation in the operational management of TheCityUK.
16. TheCityUK is an industry-led body representing UK-based financial and related professional services. According to its website, its purpose is to *“champion and support the success of the UK-based financial and related professional services ecosystem, and thereby [its] members”*⁵. In particular, TheCityUK *“engages with policymakers and other key stakeholders in the UK, across the EU and in Brussels to identify priorities and solutions, and to help shape a new, mutually beneficial relationship with the EU post-Brexit”*. Furthermore, TheCityUK *“engages in dialogues with financial sector representatives in a number of EU Member States. TheCityUK also sits on the UK’s government Financial Services Trade and Investment Board (FSTIB)”*⁶, a partnership between government and the industry, which is focused on maintaining and strengthening the

⁴ <https://www.thecityuk.com/assets/2015/Reports-PDF/26c761c396/TheCityUK-Board-Charter-August-2015.pdf>

⁵ <https://www.thecityuk.com/about-us/>

⁶ <https://www.thecityuk.com/about-us/our-committees-and-groups-2/financial-services-trade-and-investment-board-fstib/>

UK's leading position in financial and related professional services and ensuring its continued competitiveness.

17. As underlined by Mr. Farkas in his 18 April 2020 notification, the activities of the TheCityUK extend to a wide range of financial services policy matters including some EU policy issues. Therefore, the EBA JC considers that TheCityUK activities are closely related to the tasks performed by Mr. Farkas when he was the Executive Director of the EBA. The information presented by Mr. Farkas suggests that taking up a position at TheCityUK Board, even in a non-executive capacity, creates potential conflicts with the legitimate interests of the EBA.
18. The EBA JC considers that the measures decided by the EBA Board of Supervisors Decision of 12 September 2019 shall contribute to mitigate this potential conflict of interest, since they address Mr. Farkas' tasks and responsibilities as CEO of AFME, which encompass his non-executive role as Board Member of TheCityUK.
19. In particular, the EBA Board of Supervisors decided that for 18 months after leaving the service of the EBA Mr Farkas shall 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 fact should mitigate an arising conflict of interests in the area of EU financial services policy.
20. However, the length of this restriction, which ends on the first of August 2021 according to the Board of Supervisors' 12 September 2019 Decision, may not be suited to mitigate the risks of conflicts of interests in matters related to the exiting process of the United Kingdom of the European Union and related financial services policy matters such as equivalence of regulatory and supervisory requirements.
21. On 31 January 2020, the withdrawal agreement entered into force upon the UK's exit from the EU. This marked the start of a transition period scheduled to last until 31 December 2020, during which time the UK is still treated as a member state. The transition period may be extended by one or two years, with agreement on extension to be decided not later than June 2020. The EU and the UK have started rounds of negotiations to determine the EU-UK future relationship. Although financial services are not included in the scope of these negotiations, the future of their related policies is exposed to lobbying activities from the financial services industry of the UK and their representatives, such as TheCityUK. In particular, the outcome of the discussion on the equivalence of regulatory and supervisory requirements, which are being assessed in parallel, is an important issue for the UK financial industry.
22. If the transition period is extended beyond August 2021, the restrictions on Adam Farkas' contribution to financial services' policy issues that he had followed during his time as EBA's Executive Director would no longer apply, while the EU-UK negotiations on a future relationship would still be ongoing. In that situation, the participation of a former EU senior official, even indirectly through a non-executive board member role, to lobbying activities of TheCityUK in the context of the negotiations between the EU and the UK on a future relationship would be in

conflict with the legitimate interests of the EBA. Moreover, such participation could be the source of a reputational risk for the EBA and the EU in general.

23. In order to mitigate this conflict of interest and the reputational risk associated for the EBA, the EBA JC considers that Mr. Farkas should not be allowed to take up a position of a non-executive member at the Board of Directors of TheCityUK until the negotiations between the EU-UK future relationship are completed.

24. In addition, the EBA JC notes that the restrictions after leaving the service of the EBA set in the article 2 of the EBA Board of Supervisors Decision of 12 September 2019 remain.

Done at Paris, 05 05 2020

[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 18 April 2020 by Adam Farkas
- Annex 2: Job description of EBA Executive Director
- Annex 3: Opinion 2019/01 of the EBA Joint Committee
- Annex 4: Decision of the EBA of 12 September 2019 concerning restrictions on engagement on an occupational activity