



Rozhodnutí ve věci 2168/2019/KR týkající se rozhodnutí Evropského orgánu pro bankovníctví, kterým bylo vyhověno žádosti jeho výkonného ředitele stát se generálním ředitelem finanční lobbistické skupiny

Rozhodnutí

Případ 2168/2019/KR - **Otevřeno dne** 16/01/2020 - **Doporučení týkající se** 07/05/2020 - **Rozhodnutí ze dne** 18/11/2020 - **Dotčený orgán** Evropského orgánu pro bankovníctví (Instrukce s doporučením souhlasí) |

Tato věc se týkala rozhodnutí, kterým Evropský orgán pro bankovníctví (EBA) umožnil svému výkonnému řediteli přijmout funkci generálního ředitele lobbistické skupiny.

Veřejná ochránkyně práv konstatovala dva případy nesprávného úředního postupu a vydala tři doporučení, aby se v budoucnu podobné problémy neopakovaly.

Zprv by měl orgán EBA v případě potřeby uplatnit možnost zakázat svým vedoucím pracovníkům zastávat po skončení jejich funkčního období některé funkce. Každý takový zákaz by měl být časově omezen, například na dva roky.

Zadruhé by orgán EBA měl stanovit kritéria, při jejichž naplnění podobné přesuny v budoucnu zakáže, díky kterým by měli vedoucí pracovníci v dané věci jasno. Uchazečům o vedoucí funkce v orgánu EBA by měla být tato kritéria sdělena při podání žádosti.

Zatřetí by orgán EBA měl zavést interní postupy, na jejichž základě bude pracovníkovi s okamžitou účinností zamezen přístup k důvěrným informacím, jakmile vejde ve známost, že tento zaměstnanec mění zaměstnání.

Veřejná ochránkyně práv šetření uzavřela poté, co orgán EBA přijal její doporučení a podnikl kroky k jejich provedení.

Veřejná ochránkyně práv je přesvědčena, že zásady, které orgán EBA zavedl, v budoucnu pomohou zabránit újmám, které nastávají při přesunech zaměstnanců z veřejného do soukromého sektoru. Ostatní orgány a agentury EU by při přepracování svých vlastních pravidel v této oblasti měly čerpat inspiraci z nových opatření zavedených orgánem EBA.



Background to the complaint

1. On 27 November 2019, the Ombudsman received a complaint about the decision of the European Banking Authority (EBA) to allow its Executive Director to take up a position as CEO of an association representing banks.
2. The Ombudsman conducted an inquiry [1], including by inspecting relevant EBA documents. The Ombudsman found two instances of maladministration.
3. On 7 May 2020, the Ombudsman issued three recommendations to the EBA to ensure that this maladministration would not reoccur. [2]
4. On 28 August 2020, the EBA sent its reply to the Ombudsman. The EBA accepted the Ombudsman's recommendations and adopted measures to implement them. [3]
5. On 29 September, the complainant submitted comments on the EBA's reply. [4]

The Ombudsman's recommendation

6. In the course of her inquiry, the Ombudsman found two instances of maladministration. First, the EBA should have forbidden the job move. While the EBA adopted extensive restrictions, these were not sufficient when measured against the risks involved. Second, the EBA did not, once notified of the planned move, immediately withdraw its Executive Director's access to confidential information.
7. The Ombudsman issued three recommendations, saying the EBA should:
 - (i) Where necessary in future, invoke the option of forbidding its senior staff from taking up certain positions after their term-of-office. Any such prohibition should be time-limited, for example, for two years;
 - (ii) Set out criteria for when it will forbid such moves in future so as to give clarity to senior staff. Applicants for senior EBA posts should be informed of the criteria when they apply; and
 - (iii) Put in place internal procedures so that once it is known that a member of its staff is moving to another job, their access to confidential information is cut off with immediate effect.
8. The EBA accepted these recommendations. It said that it is committed to forbidding its senior staff from taking up certain problematic positions when leaving the EBA. The EBA said that it had, for example, prohibited its former Executive Director from becoming a non-executive director for a lobby group for the UK financial industry. [5]
9. The EBA further adopted two policies to implement the Ombudsman's recommendations that will be included in the EBA's 'Ethics Guide' when it is next updated. [6]

Policies adopted by the EBA



Restricting access to confidential information

10. The EBA adopted a policy to restrict access to confidential information for staff moving to another job outside the EBA. [7]

11. The policy states that members of staff should behave with integrity and discretion in any negotiations concerning post-employment occupational activities. [8] The policy stresses the need for members of staff to inform their line manager when taking part in any negotiations concerning jobs that “ *could be perceived to affect [their] independence in carrying out [their] duties, endangering trust in the EBA’s performance of its tasks* ”. [9]

12. The EBA’s policy provides the following guidance in this respect. Members of staff “ *should take into account the nature of [their] current role including [their] seniority, the nature of the potential future employer and role, and whether the organisation is one which is subject or affected by EBA decisions, guidelines, recommendations or opinions, or represents such organisations.* ”

13. Once the EBA is informed of a staff member’s intention to move to another job, three related processes are triggered. These concern assessing whether:

I. the staff member’s access to confidential information should be suspended,

II. the intended new job gives rise to conflicts of interest while the member of staff is still in service, and

III. the intended new job would give rise to conflicts of interest after the member of staff has left.

14. As regards suspending the staff member’s access to confidential information, this is the rule, unless the intended new job is in the service of the EU, in the public sector of the EEA or in an international organisation, or the intended new job is not related to the member of staff’s job at the EBA (for example when the new job would not be in, or principally providing services to, the financial sector).

15. In case access to confidential information is suspended, the EBA will assess whether the intended new job could affect the staff member’s independence, and what level of access to confidential information should be granted accordingly.

Post-employment restrictions and prohibitions

16. The EBA adopted a policy setting out criteria for assessing future jobs of its staff in terms of applying restrictions and prohibitions. The EBA made clear that, given its role in regulating and supervising financial institutions, intended new jobs are most likely to give rise to conflicts of interest where the future employer is subject to, or affected by, EBA decisions,



guidelines, recommendations or opinions, or represents such organisations. [10]

17. The EBA indicated that the level of conflict of interest is likely most significant where the member of staff concerned is in a senior role at the EBA and/or has knowledge of confidential information; where the intended new job concerns a senior position; and where the scale of the market presence of the company, or the scale of the influence of the organisation on industry practices and policy-making [11], is considerable.

18. When the EBA identifies a risk of conflicts of interest, it will decide to apply restrictions and/or prohibitions on a case-by-case basis. Decisions adopted by the EBA in this regard, aim to strike the appropriate balance between the need to ensure integrity through temporary prohibitions and restrictions, and the need to respect the fundamental right to engage in work and to pursue a freely chosen or accepted occupation.

19. The EBA lists the principal kind of measures it may consider in this regard in its policy. Prohibitions, the EBA specifies, are likely to be used mostly in relation to senior staff such as the Chairperson, Executive Director, directors and advisors. EBA vacancy notices now contain a section summarising the post-employment restrictions.

Comments of the complainant

20. The complainant recognised that the EBA reply to the recommendation is a sign of progress. However, the complainant still sees room for improvement.

21. The complainant's main concern is that problematic revolving door moves of EBA staff, in its view, could still happen in future. [12] In particular, the complainant takes issue with the EBA policy for assessing future jobs of EBA staff that conflict with the EBA's interests, including that "*an appropriate balance between the need to ensure integrity through temporary prohibitions and restrictions, and the need to respect the fundamental right to engage in work and to pursue a freely chosen or accepted occupation*" should be struck. The complainant argued that this could lead to the EBA [13] prioritising the right to engage in work over mitigating measures, including possible prohibitions.

The Ombudsman's assessment after the recommendation

22. The Ombudsman commends the EBA for agreeing to introduce far-reaching measures as regards risks of conflict of interest in post-employment activities and access to confidential information of staff that are leaving. The Ombudsman is confident that a diligent application of these measures will help avoid damaging revolving door moves in future.

23. As regards the policy concerning restricting access to confidential information, the Ombudsman notes that it is only when the EBA is aware of a member of staff applying for a potentially problematic job, that it can take appropriate measures. The Ombudsman



[7] In accordance with article 11a(1) of the EU Staff Regulations, members of staff shall not, in the performance of their duties [..], deal with a matter in which, directly or indirectly, they have any personal interest such as to impair their independence, and, in particular, family and financial interests. See:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20140501> .

[8] In accordance with Article 16 of the Staff Regulations.

[9] In accordance with Article 11a(2) of the Staff Regulations.

[10] For example: credit institutions, investment firms, payment institutions and e-money issuers authorised in the EEA, and private sector organisations representing the interests of such companies, such as industry associations, or advise and represent them, such as consultancies.

[11] For example if the organisation is an influential financial services' interest representative.

[12] See footnote 4, as well as:

<https://www.changefinance.org/2020/10/01/press-release-eu-banking-authority-leaves-loop-holes-on-rev>

[13] For staff the Appointing Authority is the Executive Director, for the Chairperson and the Executive Director the Appointing Authority is the EBA's Board of Supervisors.

[14] In accordance with Article 15, see:

https://www.europarl.europa.eu/charter/pdf/text_en.pdf .

[15] In line with Article 16 of the EU Staff Regulations:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20140501> .