

Letter from the European Ombudsman opening the inquiry into the decision of the European Banking Authority to approve its Executive Director's request to become CEO of an association representing the interests of the wholesale financial industry

Correspondence - 16/01/2020

Case 2168/2019/KR - Opened on 16/01/2020 - Recommendation on 07/05/2020 - Decision on 18/11/2020 - Institution concerned European Banking Authority (Recommendation agreed by the institution) |

Mr José Manuel Campa

Chairman

European Banking Authority

Strasbourg, 16/01/2020

Complaint 2168/2019/KR

Subject: The European Banking Authority's decision to approve the request from its Executive Director to become CEO of an association representing the interests of the wholesale financial industry

Dear Mr Campa,

I have received a complaint from 'Change Finance' [1] concerning the European Banking Authority's (EBA) decision to approve the request of its Executive Director to become Chief Executive Officer (CEO) of the Association for Financial Markets in Europe (AFME) [2] .

The complainant is of the view that the move will create an unavoidable conflict of interests and that, therefore, the EBA should have forbidden its Executive Director from accepting the job



offer.

I have decided to open an inquiry into this complaint. To enable me to examine the matter fully, I would be grateful if the EBA could reply to the questions set out in annex.

Please note that I normally send replies and related enclosures to the complainant for comments [3] .

I would be grateful to receive the EBA's reply by 28 February 2020.

The responsible case handler is Mr Koen Roovers, who can be contacted on koen.roovers@ombudsman.europa.eu [Link] and 0032 22 84 11 41.

Attached to this e-mail, please find a copy of the complaint.

Yours sincerely,

Emily O'Reilly

European Ombudsman

Enclosures:

- Annex with questions
- Complaint 2168/2019/KR

Annex: Ombudsman questions to the EBA in case 2168/2019/KR

Period prior to 2 August 2019 (when the EBA was informed by its Executive Director of his intention to engage in a new occupational activity and when he submitted his resignation letter)

1. When and how did the Executive Director become aware of the job opportunity with AFME?
[4] Please include in the answer: i. whether AFME's CEO vacancy was published and ii. whether it was AFME or the Executive Director who initiated contact on the matter?
2. Please provide a chronology of all contacts between the Executive Director and AFME that took place between 1 January 2018 and 2 August 2019, beyond those listed on the calendar of meetings that the EBA has published [5] .



3. Please provide copies of any communication between the Executive Director and AFME that are in the possession of the EBA.

4. Prior to 2 August 2019, did the Executive Director recuse himself from any of his responsibilities at the EBA? If so, please provide an explanation as to why this was deemed necessary.

5. Has the EBA assessed whether the Executive Director had any responsibilities or tasks during the period prior to 2 August 2019, when he was aware of the job opportunity at AFME, that could have caused a risk of conflict of interest? If not, please do so for the purpose of replying to this question.

Period after 2 August 2019

6. At what point in time were all the arrangements in place to reassign the Executive Director's responsibilities to other senior members of the EBA's staff?

7. Did the Executive Director recuse himself from any of his responsibilities in the period between 2 August 2019 and the date on which the EBA put in place the necessary arrangements?

8. The EBA's decision on the Executive Director's post-employment activities included that he would no longer participate in the EBA's policy and supervisory work and would have only organisational tasks until 31 October 2019. From then, until his departure on 31 January 2020, his functions were delegated to other EBA managers.

The Executive Director of the EBA seems to remain a member of the Board of Supervisors of the European Securities and Markets Authority (ESMA). This body's main role is "*to make policy decisions of ESMA*" [6]. It could be perceived as being contradictory that, in an effort to mitigate risks of conflict of interest, the Executive Director would no longer be involved in policy matters at the EBA but would, at the same time, remain involved in ESMA policy-making.

Did the EBA communicate to ESMA, the EBA's decision to approve its Executive Director's new job with restrictions, including by limiting his tasks to organisational matters during the remainder of his time in office, and that he would be on leave from 1 November 2019 until 31 January 2020?

General

9. The legal framework that applies to former senior EU civil servants includes a lobbying ban of one year [7]. The EBA has defined lobbying as: "*activities conducted, **directly or indirectly**, by the former staff member of the EBA which aim to influence staff working at the EBA*" [8]. Indirect influencing is defined by the EBA as "*influencing through activities not conducted directly by the former staff member vis-a-vis the staff of the EBA but on which he/she is involved, **e.g. managing a team of people who will conduct those activities, or designing such activities, or providing advice to the organisation for which he/she works or provides professional services***" (emphasis added).



The EBA described AFME in its Decision as: “ *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* ”.

Could the EBA please comment on its decision to approve the job move, with restrictions, with specific reference to the abovementioned elements?

10. Please explain how and by whom the option of prohibiting the Executive Director’s job move was assessed? In answering this question, please submit all supporting documents.

11 . How does the EBA interpret the obligation laid down in Article 16 of the Staff Regulations that former staff: “ *continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits* ”?

12. The Advisory Committee on Conflict of Interest (ACCI) advised the EBA Management Board to consider the costs and benefits to the EBA of retaining the Executive Director in a purely administrative role, and the duration of such a role. ACCI further advised that this consideration should take into account the perception of external stakeholders of the Executive Director’s continuing with the EBA given the nature of his future employer.

Did the Management Board do this? If so, please provide an explanation as regards how this was done and any supporting documents.

[1] Change Finance describes itself as a ‘citizens’ movement’ made up of ‘charities, campaigning groups, think tanks, environmental groups, religious organisations and trade unions’, as well as ‘academics, financiers, leaders and celebrities’ (see <https://www.changefinance.org/who-is-behind-this/> [Link]).

[2] AFME describes itself as the ‘voice of Europe’s wholesale financial markets’. It represents ‘global and European banks and other significant capital market players’. It says it advocates for ‘integrated European capital markets’ and aims to act as a ‘bridge between market participants and policy makers across Europe’, drawing on its ‘strong and long-standing relationships’ (see <https://www.afme.eu/About-Us> [Link]).

[3] If you wish to submit documents or information that you consider to be confidential, and which should not be disclosed to the complainant, please mark them ‘Confidential’. Such documents can be sent through secure channels, such as Ares, CIRCABC or equivalent applications. The case handler can be contacted beforehand, if necessary.



[4] If Mr Farkas has not yet provided the EBA with the information necessary to answer this, and other, questions, the EBA should immediately request Mr Farkas to provide it with this information.

[5] See: <https://eba.europa.eu/about-us/organisation/top-management> [Link].

[6] See: <https://www.esma.europa.eu/about-esma/governance/board-supervisors-and-ncas> [Link].

[7] The third paragraph of Article 16 of the Staff Regulations stipulates that, for former senior officials, the appointing authority shall, in principle, prohibit them, during the 12 months after leaving the service, from engaging in lobbying or advocacy vis-à-vis staff of their former institution for their business, clients or employers on matters for which they were responsible during the last three years in the service.

[8] Direct influencing is defined by the EBA as: *"influencing by way of a direct contact or communication with the staff working for the EBA or other action following up on such activities*
, see:

<https://eba.europa.eu/sites/default/documents/files/documents/10180/2590106/634db05c-6f15-474f-a6ba-bab8251a>