

Recommendation of the European Ombudsman in case 2168/2019/KR on how the European Banking Authority handled the move of its former Executive Director to become CEO of a financial industry lobby

Recommendation

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) |

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, the Association for Financial Markets in Europe (AFME).

The Ombudsman conducted an inquiry, inspected the relevant EBA documents and found maladministration, first, in that the EBA should have forbidden the job move. While the EBA adopted extensive restrictions, these are not sufficient when measured against the risks involved. The Ombudsman considers that if this move does not justify the application of the option, set out in the Staff Regulations, to forbid a staff member accepting a job offer, no move would.

Second, there was maladministration in that the EBA did not, once notified of the planned move, immediately withdraw its Executive Director's access to confidential information.

The Ombudsman issues three recommendations to the EBA, which 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.

The EBA should reply to these recommendations within three months.



Introduction

1. All public authorities need the trust of the public they serve. The public must trust that the general interest is being served, and not private or personal interests. Many citizens can have serious concerns when a senior public official moves to the private sector soon or even immediately after leaving the public service.
2. When staff members, especially senior staff, leave the EU civil service to take up positions in the private sector, they are sometimes described as going through the “revolving door”. Whatever the professional legitimacy of the practice, the public may feel that a civil servant may be inappropriately influenced by the contemplation of future potential roles or abuse their former public service role through the inappropriate monetising or other exploitation of that role when they leave that career behind.
3. Revolving door moves may give rise to 1) risks of a conflict with the legitimate interests of the EU or 2) risks that confidential information may be disclosed or misused; or 3) risks that former staff members may use their close personal contacts and friendships with ex-colleagues to gain a lobbying advantage.
4. The above risks must be analysed taking into account, among other things, the individual’s fundamental right to engage in work. Restrictions on the rights of former EU civil servants to work in the private sector must be a) necessary for the purposes of achieving a legitimate public interest and b) proportionate [2] [\[Link\]](#). The EU Staff Regulations set out rules to manage this difficult challenge for the EU administration. The Ombudsman has previously looked extensively at how the European Commission deals with this challenge [3] .
5. EU institutions must always assess ‘revolving doors’ cases from the perspective of the public interest. While all such moves need to be assessed on a case-by-case basis, greater scrutiny of moves by senior officials is imperative given the higher potential risks involved to the interests of the institution. The nature of the employment contract also needs to be taken into consideration, whether it is a permanent official who is leaving or retiring, or a temporary or contract agent.
6. This inquiry concerns how the European Banking Authority (EBA) dealt with the move of its Executive Director [4] [\[Link\]](#) to the Association for Financial Markets in Europe (AFME), an association that represents the wholesale financial sector [5] . According to AFME’s website, it “*acts as a bridge between the wholesale financial markets, politicians, regulators and the public*” [6] [\[Link\]](#). Specifically, the inquiry examines the actions the EBA took, or did not take, once it was informed of the job move. It examines whether sufficient safeguards were put in place to prevent the Executive Director using information and contacts obtained in the service of the EBA when he moved to AFME, and whether sufficient safeguards were put in place to prevent the Executive Director lobbying the EBA when he moved. More broadly, the inquiry concerns whether the EBA’s independence has been compromised and whether the EBA has acted in a way that maintains the public’s trust.



The European Banking Authority

The EBA is a supervisory authority established on 1 January 2011 in the aftermath of the financial crisis, to safeguard the integrity, transparency, efficiency and orderly functioning of financial markets. The EBA contributes to prudential regulation and supervision of the European banking sector, ensuring that banks follow EU requirements aimed at controlling risks and ensuring that they hold adequate capital buffers. The EBA also conducts pan-European stress tests of the banking sector.

The EBA is managed by an Executive Director, whose independence is enshrined in the EBA founding Regulation. This states that neither EU Member States, the EU's institutions or bodies, nor any other public or private body shall seek to influence the Executive Director in the performance of his tasks (see Article 52 of the EBA's founding Regulation). The Executive Director is, even when he ceases to be an EU civil servant, bound by the duty to behave with integrity and discretion, including as regards the acceptance of certain appointments or benefits (see Article 16 of the EU Staff Regulations).

The EBA functions as follows:

- The EBA's **Board of Supervisors** is the EBA's main decision-making body regarding matters of policy. It is composed of representatives of national banking supervisory authorities of the 27 EU Member States. Where applicable, the members of the Board of Supervisors are accompanied by a representative of the national central bank. The European Commission, the European Systemic Risk Board, the European Central Bank, the European Securities and Markets Authority (ESMA), and the European Insurance and Occupational Pension Authority (EIOPA) are also members of the Board.
- The EBA's **Management Board** ensures that the EBA performs its tasks to carry out its mission. This includes, among other things, adopting the EBA's annual work programme, annual budget, staff policy plan and annual report. It is composed of representatives of national banking supervisory authorities and the European Commission.
- The EBA **Chairperson** chairs the Board of Supervisors and the Management Board.
- The **Executive Director** reports to the Chairperson and is responsible for the EBA's day-to-day management. Concrete tasks of the Executive Director include implementing the EBA's work programme and preparing a multi-annual work programme, the budget and reports on financial and administrative matters. The Executive Director is also responsible for reports on the EBA's regulatory and supervisory activities. He participates in, but is not a member of, the EBA's Board of Supervisors*. He prepares the work of, but is not a member of, the EBA's Management Board.

See for further details:

The EBA's founding regulation, see: <https://eur-lex.europa.eu/eli/reg/2010/1093/> [Link].

A full overview of the EBA's governance is available here:

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



The EBA's Executive Director's tasks are defined in Article 53 of the EBA founding regulation (Regulation (EU) No 1093/2010 [...] establishing a European Supervisory Authority (European Banking Authority), see: <https://eur-lex.europa.eu/eli/reg/2010/1093/> [Link].

* In this case, the Executive Director had also been appointed by the Board of Supervisors as Chair of the Review Panel, which was a body established to organise and carry out peer reviews and comprised representatives of competent authorities from each Member State. The functions of Chair of the Review Panel are separate and distinct from the functions of the Executive Director.

Background to this complaint

7. On 17 September 2019, the EBA announced that its Executive Director would resign from his post on 31 January 2020 to become the CEO of AFME. The members of AFME are mainly large multi-national banks. Amongst its various activities, AFME lobbies the EBA [7] [Link] and contributes to EBA stakeholder consultations.

8. The EBA stated that it had assessed the potential conflict of interest arising from the move and had, in that context, limited the role of the Executive Director within the EBA until he left on 31 January 2020. It further set out a range of conditions for the move in a 'Restrictions Decision' [8] [Link].

9. The complainant, Change Finance [9] [Link], is a coalition of civil society groups. It contacted the EBA with concerns that the move of the Executive Director to AFME would give rise to a conflict of interest. Dissatisfied with the EBA's response to its concerns, the complainant turned to the Ombudsman on 27 November 2019.

10. On 16 January 2020, the **European Parliament** adopted a resolution in which it questioned the EBA's decision to allow the former Executive Director to take up the CEO position, and called on the EBA to review its decision. The resolution furthermore suggested that Members of the European Parliament and representatives of the European Commission and the Council of the EU refrain from contact with the former Executive Director in his new position for two years to avoid a potential conflict of interest. [10] [Link]

The inquiry

11. The Ombudsman opened an inquiry into whether the EBA ensured that no conflict of interest arose in the context of the move of its Executive Director to AFME, and whether sufficient safeguards were put in place to prevent the Executive Director from using EBA information and contacts acquired in the service of the EBA, including to support AFME's lobbying of the EBA.



12. In the course of the inquiry, the Ombudsman received the EBA's reply [11] to questions posed by the Ombudsman [12] [\[Link\]](#), and the comments of the complainant on the EBA's reply [13]. The Ombudsman's inquiry team also inspected a number of documents from the EBA.

The EBA's decision to allow the former Executive Director to join AFME

Arguments presented to the Ombudsman

By the EBA:

13. The EBA describes AFME 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.* ”

14. The EBA agrees that “ *the potential conflict of interest between the activities of the Executive Director and the proposed occupational activity is very significant* ”.

15. The EBA considered the option of forbidding the Executive Director from taking up the job of CEO [14]. The EBA concluded, however, that it was necessary to take into account the Executive Director's right to work. In that context, it said that it was necessary to determine whether the conflict of interest linked to the intended post could be mitigated by imposing restrictions.

16. The EBA thus granted the Executive Director permission [15] [\[Link\]](#) to accept the job offer, subject to a number of restrictions:

- The Executive Director ceased to have access to privileged EBA information as of 23 September 2019;
- For the remainder of his time at the EBA, the Executive Director no longer participated in policy and supervisory work. He had only 'organisational' tasks;
- On 31 October, he went on leave until his contract at the EBA ended on 31 January 2020;
- From the end of October until his departure on 31 January 2020, all his functions at the EBA were delegated to other EBA staff;
- He is banned from lobbying and contacting (in a professional capacity) EBA staff for a period of two years after he joined AFME [16] [\[Link\]](#).
- He is required to refrain from assisting AFME members and otherwise contributing to AFME's activities on topics directly linked to work carried out by him during the last three years at the EBA [17]. This obligation applies for 18 months after he left the EBA.
- He is also required to refrain from ever disclosing, without authorisation, information obtained at any time during his EBA service, except for information that is already accessible to the



public. Similarly, he must not exploit insights of a confidential nature acquired at any time during his EBA service, in policy, strategy or internal processes that are not already accessible to the public.

17. The EBA stated that primary responsibility for applying the Restrictions Decision lies with the former Executive Director.

18. In February 2020, the EBA took and announced, a number of implementing measures to reduce the risk of indirect lobbying by the former Executive Director [18] . The EBA further indicated that it intends to report annually on compliance with its Restrictions Decision [19] .

By the complainant:

19. The complainant appreciates that the EBA has eventually taken additional implementing measures to diminish the risk that the former Executive Director is involved in lobbying by AFME.

20. For the complainant, however, the fundamental problem remains unresolved, which is that it is not possible to find effective measures that can protect the interests of the EU institutions in general, and those of the EBA in particular, from undue use of the information and experience that the Executive Director gained while he was the senior executive staff member at the EBA.

21. The complainant expressed concern about a number of the EBA's additional implementing measures, pointing out that they will result in statements from AFME as regards compliance with the EBA's restrictions, which the EBA cannot verify.

22. The complainant was concerned with the way in which the right to engage in work and pursue a freely chosen career or accepted activity featured in the EBA's assessment of the notified job. In the complainant's view, the EBA would not be preventing the Executive Director from engaging in work, had it not approved the move. It would have merely barred him from one particular problematic job.

The Ombudsman's assessment leading to a recommendation

23. The purpose of the requirement set out in Article 16 of the Staff Regulations is to give the EBA the opportunity to assess whether the job the Executive Director would take up is compatible with the interests of the EBA. Article 16 contains the option of forbidding a civil servant from taking up a position, if it is related to the official's work in the last three years of service and could “ *lead to a conflict with the legitimate interests of the institution* ” [20] . According to EU case law, the institutions enjoy wide discretion in this area [21] [\[Link\]](#).

24. As the option of forbidding the Executive Director was the most restrictive option available to



the EBA, it should have been used only where the other less restrictive measures were not adequate in terms of protecting the interests of the EBA.

25. As regards what those ‘interests’ are, the Ombudsman notes that the EBA has an interest in ensuring that it maintains a particularly high degree of independence from the European banking sector. After all, the EBA was established precisely to harmonise supervision of this sector in the aftermath of the financial crisis, a crisis which had exposed significant shortcomings in financial supervision, both in particular cases and in relation to the financial system as a whole [\[22\] \[Link\]](#). If the EBA cannot ensure that it maintains the strictest independence from the European banking sector, it will not be able to carry out this important work properly. If citizens are not reassured that the EBA is taking all possible steps to ensure that it remains independent from the European banking sector, they risk losing trust in the EBA and, by extension, the EU.

26. These observations apply to the EBA as a whole, and to all its staff. However, it is noteworthy that the EBA Founding Regulation makes particular reference to the need to ensure that the Executive Director remains independent. It states that neither EU Member States, the EU’s institutions or bodies, nor any other public or private body shall seek to influence the Executive Director in the performance of his tasks [\[23\] \[Link\]](#). This specific rule reflects the particular role of the EBA and the important position held in the EBA by the Executive Director [\[24\] \[Link\]](#).

27. The EBA’s examination of its Executive Director’s request to join AFME, an entity representing banks that are significantly affected by the activities of the EBA, took place in this context.

28. The EBA decided not to forbid the Executive Director’s move to AFME. Rather, it approved it, with restrictions.

29. The Ombudsman’s view is that these restrictions, while extensive [\[25\] \[Link\]](#), are not sufficient when measured against the 1) risks of a conflict with the legitimate interests of the EU; 2) risks that confidential information may be disclosed or misused; or 3) risks that former staff members may use their close personal contacts and friendships with ex-colleagues to lobby. The Ombudsman considers that if this move to AFME does not justify the application of the option, set out in the Staff Regulations, to forbid a staff member accepting a job offer, no move would.

30. As regards 1), maintaining public trust in the EBA is an important interest of the EBA, and of the EU, which must be taken into account when applying Article 16 of the Staff Regulations. The EBA’s approval of the former Executive Director’s move to AFME has caused wide-spread public disquiet. The approval of the move creates the understandable impression that the EBA, despite its obligations to ensure the highest degree of independence from the financial sector, allows its senior staff to maintain very close ties with that sector.

31. As regards 2), while the Restrictions Decision contains clear and ambitious rules, it cannot



be effectively monitored by the EBA. Even assuming the best efforts of the former Executive Director, he cannot be made to forget the confidential information that he is aware of, which must be assumed to be significant. Even if he endeavours not to disclose this information to AFME colleagues, he cannot be expected to prevent that information from at least influencing his decisions at AFME.

32. As regards 3), the Restriction Decision - while going beyond the 12 months lobbying ban set out in the Staff Regulations - is still arguably too short in this context. Given the highest level contacts that the former Executive Director maintained, at the EBA and at other EU institutions and bodies [\[26\] \[Link\]](#), since 2011, there are strong reasons to believe that he would still be able to use his contacts, once the Restriction Decision expires. Moreover, even if it were possible for the EBA and other EU institutions and bodies to monitor that the former Executive Director does not engage in direct lobbying himself, there is no way to monitor if he is indirectly lobbying by assisting AFME staff and AFME members to lobby the EBA, by for example, advising them on lobbying strategy and content.

33. In light of the above, the Ombudsman finds that the EBA's decision not to forbid its Executive Director from becoming the CEO of a financial industry lobby was maladministration. Forbidding the job move would have been a necessary and proportionate measure in this particular case.

34. While the EBA had the right to forbid the Executive Director from taking up the position at AFME when, in August 2019, he sought authorisation for the move, it no longer has that option; it cannot withdraw its authorisation as the Executive Director has already acted on it. However, the Ombudsman makes two recommendations below [\[27\] \[Link\]](#), aimed at preventing similar situations occurring.

How the EBA handled the other consequences of the Executive Director's job move

35. It is also important to examine in this inquiry whether the EBA took adequate steps as soon as it was informed that its Executive Director planned to take up a job with AFME. Specifically, when opening the inquiry the Ombudsman addressed a number of questions to the EBA to verify whether safeguards were put in place to ensure that no conflict of interest arose during the recruitment process for the post of CEO and whether the other steps that were eventually taken to avoid a conflict of interest were adequate.

Arguments presented to the Ombudsman

By the EBA:

36. The EBA stated that the former Executive Director provided the EBA with the following



information concerning the recruitment procedure for the AFME CEO vacancy,:

- To his knowledge, the vacancy was not published.
- The recruitment firm that AFME contracted for the selection of a new CEO, first contacted the former Executive Director regarding the vacancy on 18 April 2019. He said that this contact was unsolicited.
- Various interviews took place in May, June and July, either in person, by video or by phone. AFME's then CEO took part in these interviews.
- The recruitment firm sent the former Executive Director the job offer on 29 July 2019, and the draft employment contract on 30 July.
- The former Executive Director informed the EBA Chairperson on 1 August of his intention to resign. He then submitted a resignation letter to the EBA and requested it to authorise his move to AFME.

37. The EBA confirmed that the Executive Director did not recuse himself, during the period the recruitment procedure was on-going, from any of his responsibilities at the EBA. The EBA also confirmed that the Executive Director worked on some of the issues listed in the Restrictions Decision during the AFME recruitment procedure. For example, he worked on the EU impact assessment of the finalised Basel III standards and how these standards would be implemented [\[28\] \[Link\]](#).

38. The EBA argued, however, that the Executive Director's specific responsibilities and tasks during that period did not give rise to a risk of a conflict of interest, in particular in relation to the EBA's policy work.

By the complainant:

39. The complainant pointed out that officials might have an incentive to act favourably towards stakeholders that carry a promise of future employment.

40. The complainant contended that it was highly problematic that the EBA's Executive Director participated in AFME's recruitment procedure for approximately three and a half months before informing the EBA.

41. The complainant was also concerned about the amount of contact that had taken place between AFME and the EBA's Executive Director.

42. The complainant reviewed the minutes of the Management Board from this period, and commented that the former Executive Director had played a prominent role in Management Board discussions relating to matters of interest to AFME.

The Ombudsman's assessment leading to a recommendation



Timeline

43. The Ombudsman's inquiry has allowed her to verify the following: in April 2019, a recruitment firm contacted the Executive Director on behalf of AFME to inform him that AFME was seeking to recruit a new CEO. The Executive Director was then interviewed by AFME, which offered him the job on 29 July. The Executive Director informed the Chairperson of the EBA on 1 August 2019 that he intended to accept this job offer and that he would resign from his position as the Executive Director of the EBA [\[29\]](#) [\[Link\]](#).

44. On 2 August, the Executive Director submitted his resignation to the EBA in writing. His resignation letter also included a formal notification, pursuant to Article 16 of the Staff Regulations, of his intention to become CEO of AFME.

45. The Executive Director then took annual leave for three weeks. When he returned to work, on 26 August, he recused himself from dealing with all regulatory and supervisory matters at the EBA. He no longer took part in the Board of Supervisors or dealt with Management Board agenda items regarding regulatory and supervisory matters. Speaking engagements and all planned participation in external meetings were reassigned to other EBA staff.

46. On 12 September, the EBA's Board of Supervisors - the national supervisory authorities and others - adopted the Restrictions Decision and, on 16 September, communicated it to the Executive Director. It stated that, for the remainder of his time at the EBA, the Executive Director would work only on administrative matters, including finance, human resources, procurement, and the finalisation of the 2020 work programme and budget.

47. The Decision also stated that the Executive Director would be placed on paid leave from 31 October 2019 until 31 January 2020.

Analysis

48. A conflict of interest arises when an official deals with a matter in which he has any personal interest, in particular a financial interest, such as to impair his independence [\[30\]](#) [\[Link\]](#).

49. It is clear that AFME's interests, and its members' interests, are significantly and directly affected by the work of the EBA. During the time when the Executive Director was being interviewed, AFME continued to interact with the EBA, including with its Executive Director [\[31\]](#) [\[Link\]](#).

50. It is also clear that when an EBA employee hopes to take up a position at AFME, in this case a senior position, that EBA employee's own personal interests become, at least to some extent, aligned with those of AFME, which may be his future employer.

51. This is precisely why the Executive Director recused himself from dealing with supervisory



and regulatory matters at the EBA when he returned from annual leave on 26 August 2019, and why he was denied access to privileged information of the EBA from 23 September 2019.

52. According to the EBA, the Executive Director did not recuse himself from any of his responsibilities and tasks while AFME's recruitment procedure was ongoing.

53. The Ombudsman recognises that it is a sensitive issue for an employee to notify his or her employer of an intention to seek work elsewhere. The EBA could, however, seek to put in place guidance for senior staff to avoid any risk of a conflict of interest situation arising when job opportunities outside the agency are being pursued.

54. The EBA was not in a position to take any action until it was informed on 1 August. However, **at the earliest opportunity**, the EBA should have prevented the Executive Director from having access to confidential EBA information. The Executive Director was not prevented from having access to confidential EBA information **until 23 September 2019**. This was maladministration on the part of the EBA and the Ombudsman will make a corresponding recommendation below.

Findings of maladministration

1. The EBA's decision not to forbid its Executive Director from becoming the CEO of a financial industry lobby was maladministration. Forbidding the job move would have been a necessary and proportionate measure in this particular case.

2. There was maladministration in that the EBA did not immediately withdraw its Executive Director's access to confidential information.

Recommendations

Based on the inquiry into this complaint, the Ombudsman makes the following recommendations to the EBA:

1. For the future, the EBA should, where necessary, 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.

2. To give clarity to senior staff, the EBA should set out criteria for when it will forbid such moves in future. Applicants for senior EBA posts should be informed of the criteria when they apply.

3. The EBA should 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.



The EBA and the complainant will be informed of this recommendation. In accordance with Article 3(6) of the Statute of the European Ombudsman, the EBA shall send a detailed opinion by 31 August 2020.

Emily O'Reilly

European Ombudsman

Strasbourg, 07/05/2020

Annex: Time-line

Actions of the Executive Director

Actions of the EBA

January 2018 - mid 2019

The Executive Director was in regular contact with AFME. These contacts included briefings and speaking engagements on regulatory policy matters, as well as some social events.

18 April 2019

A recruitment firm contacted the Executive Director, on behalf of AFME, to inform him that AFME was seeking a new CEO.

May - June - July

The recruitment firm and AFME interviewed the Executive Director.

29 July

AFME offered the Executive Director the job.

1 August

The Executive Director verbally informed the EBA Chairperson of his intention to resign. The next day he submitted a formal resignation letter, and asked the EBA to authorise his move to become CEO of AFME.



3 - 25 August

The Executive Director was on leave. During this period, according to the EBA, he was not actively engaged in policy and supervisory matters.

In this period, the EBA assessed the Executive Director's request for authorisation to become CEO of AFME and prepared a draft authorisation decision.

26 August

The Executive Director recused himself from regulatory and supervisory matters. He no longer took part in Board of Supervisors or Management Board agenda items on such matters. Existing speaking engagements and planned participation in external meetings were reallocated among EBA staff.

The Executive Director remained involved in administrative matters including finance, human resources, procurement, and finalisation of the 2020 work programme and budget.

27 August - 10 September

The EBA Management Board discussed the draft decision.

On 30 August, the EBA Board of Supervisors launched the written procedure to allow its members to comment. In this process, the European Commission argued for a stricter approach than had been proposed in the draft.

12 September

The Board of Supervisors adopted its 'Restrictions Decision', approving the Executive Director's move to AFME, with conditions.

16 September

The Executive Director received the Restrictions Decision.

20 September

The EBA informed its staff of the measures concerning the Executive Director.

23 September - end of October

The EBA's IT department implemented information control measures concerning the Executive Director.



29 October

The Executive Director adopted a Delegation Decision. This decision took effect on 1 November, delegating his remaining tasks to other EBA managers.

1 November - 31 January 2020

The Executive Director is placed on paid leave. He remained a staff member until his departure.

1 February

The Executive Director started his new job as AFME CEO.

The Executive Director is primarily responsible for applying the Restrictions Decision.

3 February

The Management Board agreed implementing measures for the Restrictions Decision.

5 February

The acting Executive Director informed staff of the implementing measures.

11 February

The EBA wrote to AFME's Chairperson, informing AFME of the additional implementing measures it had taken to reduce the risk of indirect lobbying involving the Executive Director. In addition, AFME was informed of practical steps to be followed in order to put these measures in place.

17 February

AFME wrote to the EBA, stating it put in place an internal protocol that supplements its policy to avoid conflicts of interest, establishing arrangements to support compliance with the conditions in practice.

Before 28 February

The EBA informed other EU Institutions, Bodies and Agencies, as well as some other international organisations [32] , of the implementing measures related to the Restrictions Decision.

[1] [\[Link\]](#) Decision of the European Parliament of 9 March 1994 on the regulations and general



conditions governing the performance of the Ombudsman's duties (94/262/ECSC, EC, Euratom): <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:31994D0262>.

[2] [\[Link\]](#) See Article 15 Charter of Fundamental Rights of the European Union.

[3] [\[Link\]](#) <https://www.ombudsman.europa.eu/en/decision/en/110608>

[4] [\[Link\]](#) The European Parliament confirmed the former Executive Director in his role for the first time on 24 March 2011. His second five-year term as Executive Director was due to end in 2021.

[5] [\[Link\]](#) Wholesale banking refers to activities in which the two sides of the transaction are banks or other financial institutions.

[6] [\[Link\]](#) <https://www.afme.eu/About-Us/How-we-work>

[7] [\[Link\]](#) This is evidenced from the public logs that the EBA keeps of meetings between AFME and its senior managers, as well as from the information that the EBA submitted to the Ombudsman for the purpose of this inquiry.

[8] [\[Link\]](#) See:

<https://www.asktheeu.org/en/request/7295/response/24096/attach/8/2019%2009%2012%20Decision%20concerning>
[\[Link\]](#)

[9] [\[Link\]](#) See: <https://www.changefinance.org/the-coalition/> [\[Link\]](#).

[10] [\[Link\]](#) European Parliament resolution of 16 January 2020 on institutions and bodies of the Economic and Monetary Union: preventing post-public employment conflicts of interest (2019/2950(RSP)), see:
https://www.europarl.europa.eu/doceo/document/TA-9-2020-0017_EN.html

[11] [\[Link\]](#) See: <https://www.ombudsman.europa.eu/correspondence/127636> [\[Link\]](#)

[12] [\[Link\]](#) See: <https://www.ombudsman.europa.eu/en/correspondence/en/123642> [\[Link\]](#)

[13] [\[Link\]](#) See: <https://www.ombudsman.europa.eu/correspondence/127637> [\[Link\]](#).

[14] [\[Link\]](#) Article 16 of the Staff Regulations says: “ *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 conditions it thinks fit....*” (Emphasis added.)

[15] [\[Link\]](#) A summary of the Restrictions Decision is available here:

<https://eba.europa.eu/about-us/organisation/organisation-chart/conflict-of-interest-policy> [\[Link\]](#)



[16] [Link] There is no end date for other obligations, such as the obligation to act with integrity and discretion as regards the acceptance of certain appointments or benefits, and the obligation to refrain from any unauthorised disclosure of information obtained during his time at the EBA.

[17] [Link] Examples of such issues that the EBA specified in its Decision include: “ *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.*”

[18] [Link] See pages 10 and 11 of the EBA’s reply:

<https://www.ombudsman.europa.eu/correspondence/127636> [Link].

[19] [Link] The EBA intends to include this information in its annual report on the implementation of Article 16 of the Staff Regulations.

[20] [Link] Article 16 of the Staff Regulations states that: “ *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 thereof using a specific form. 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 conditions it thinks fit ...***”

[21] [Link] See:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1549037343294&uri=CELEX:62013FJ0086>

[22] [Link] See Recital 1 of the EBA founding Regulation.

[23] [Link] See Article 52 of the EBA’s founding regulation.

[24] [Link] Similar statements are contained in the founding regulations of other EU financial supervision bodies, such as European Securities and Markets Authority and the European Insurance and Occupational Pensions Authority, but not of other EU agencies.

[25] [Link] For example, rather than the 12 months set out in the Staff Regulations, the EBA imposed a direct lobbying ban of two years. It imposed an indirect lobbying ban of 18 months, requiring the former Executive Director to refrain during that time from assisting AFME members or otherwise contributing to AFME’s activities on topics directly linked to work carried out during the last three years at the EBA.



[26] [Link] Besides being the EBA's Executive Director, he served on Board of Supervisors of the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pension Authority (EIOPA).

[27] [Link] In accordance with Article 3(6) of the Statute of the European Ombudsman.

[28] [Link] Basel III standards are minimum requirements that apply to internationally active banks. For more information, see: <https://www.bis.org/bcbs/basel3.htm> [Link].

[29] [Link] See the annex for a detailed timeline of events pertaining to the case.

[30] [Link] Article 11a of the Staff Regulations states that:

“ 1. An official shall not, in the performance of his duties and save as hereinafter provided, deal with a matter in which, directly or indirectly, he has any personal interest such as to impair his independence, and, in particular, family and financial interests.

2. Any official to whom it falls, in the performance of his duties, to deal with a matter referred to above shall immediately inform the Appointing Authority. The Appointing Authority shall take any appropriate measure, and may in particular relieve the official from responsibility in this matter .“

[31] [Link] For example, the Executive Director took part in an AFME event in Frankfurt on 25 May 2019. Also in July emails were exchanged between AFME and the Executive Director concerning: i. AFME position papers that the Executive Director agreed to circulate internally and propose for a potential discussion with AFME (the EBA however said that no further emails were sent on these matters), and ii. an invitation to AFME's anniversary in September 2019, which the Executive Director accepted.

[32] [Link] This included the European Parliament's Committee on Economic and Monetary Affairs, the Financial Services Committee, the Commission's Directorate General for Financial Stability, the European Securities and Markets Authority, European Insurance and Occupational Pensions Authority, the Single Supervisory Mechanism's Supervisory Board, the SRB, the ESRB and the Basel Committee