



Decision in case 2168/2019/KR on the European Banking Authority's decision to approve the request from its Executive Director to become CEO of a financial lobby group

Decision

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 case concerned the decision of the European Banking Authority (EBA) to allow its Executive Director to take up a position as CEO of a lobby group.

The Ombudsman found two instances of maladministration and made three recommendations to avoid similar issues arising in future.

First, 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.

Second, the EBA should 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.

Third, 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 Ombudsman closed the inquiry after the EBA accepted her recommendations and adopted measures to implement them.

The Ombudsman is confident that the policies the EBA has introduced will help it avoid damaging revolving door moves in the future. Other EU institutions and agencies should draw on these new EBA safeguards when revising their own rules.

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 welcomes the guidance the EBA offers to its staff in this respect (see point 12), and believes that this guidance is sufficiently clear, and when complied with, likely to lead to the desired results.



24. As regards revolving door moves, and in particular bearing in mind the concerns raised by the complainant (see point 19), the EU Charter of Fundamental Rights safeguards the right to engage in work and to pursue a freely chosen or accepted occupation. [14] The Ombudsman appreciates that any decision that involves restricting that right must be necessary for the purpose of achieving a legitimate public interest, and proportionate. She recognises the difficulty involved in striking the right balance between ensuring respect for the fundamental right and avoiding conflicts of interest, or the perception thereof. [15] As such, revolving door moves should be carefully scrutinised and the Ombudsman is confident that the new policy introduced by the EBA in response to her inquiry will help ensure the right decisions are taken.

25. The Ombudsman calls on other EU institutions and agencies to draw on the new safeguards that the EBA adopted, when revising their own rules.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

The EBA has taken steps to implement the Ombudsman's recommendations.

The complainant and the EBA will be informed of this decision .

Emily O'Reilly European Ombudsman

Strasbourg, 18/11/2020

[1] See the Ombudsman's opening letter with a detailed set of questions to the EBA: <https://www.ombudsman.europa.eu/en/correspondence/en/123642> .

[2] See: <https://www.ombudsman.europa.eu/en/recommendation/en/127638> .

[3] See: <https://www.ombudsman.europa.eu/en/correspondence/en/131987> .

[4] See: <https://www.ombudsman.europa.eu/en/correspondence/en/135098> .

[5] This EBA decision was released in reply to a request for public access, see: <https://www.asktheeu.org/en/request/8049/response/27066/attach/html/2/EBA%20DC%20329%20Decis>

[6] https://eba.europa.eu/sites/default/documents/files/document_library/EBA%20DC%20271%20%28Decis

.

[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> .