

Publication of Information concerning Occupational Activities of Senior Officials after Leaving the Service (Article 16, Fourth Paragraph of the Staff Regulations)

Annual Report 2018

Introduction

1. Article 70 of the EBA founding Regulation states that members of the Board of Supervisors and the Management Board, the Executive Director, and members of the staff [...] shall be subject to the requirements of professional secrecy pursuant to Article 339 TFEU and the relevant provisions in Union legislation, even after their duties have ceased. Article 16 of the Staff Regulations will apply to them.
2. Article 16 of the Staff Regulations subject officials, after leaving the service, to the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits. They also have the obligation to inform the institution if they intend to engage in an occupational activity within two years of leaving the service; the institution shall then take a decision and, when necessary, forbid an activity or give the approval subject to appropriate restrictions.
3. 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.
4. For the purposes of implementing Article 16(3) and (4) of the Staff Regulations, and in accordance with the definition of 'senior officials' included in the Commission Decision C(2018) 4048 final on outside activities and assignments and on occupational activities after leaving the service¹, the Chairperson and the Executive Director fall under the definition.²
5. Furthermore, the EBA interprets 'lobbying' and 'advocacy activities' as follows:
 - **Lobbying activities:** activities conducted, directly or indirectly, by the former staff member of the EBA which aim to influence staff working at the EBA in:
 - a) the decision-making processes of the EBA, in particular in relation to the formulation or implementation of regulations, rules or standards,
 - b) any other activities under the scope of competence of the EBA in accordance with its founding Regulation and sectoral legislation, in the interest of the party (e.g. organisation, association, firm, body or person) at which the former staff member is

¹ See page 12, footnote n.5

² This decision applies by analogy in the EBA (EBA DC 235 of 12 September 2018)

currently employed or provides professional services, or intends to be employed with or provide professional services, irrespective of the legal status of the party or of the professional relationship.

For this definition,

‘Directly influencing’ means influencing by way of a direct contact or communication with the staff working for the EBA or other action following up on such activities.

‘Indirectly influencing’ means 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.

- **Advocacy activities:** activities conducted by the former staff member of the EBA which relate to the EBA’s scope of action and intend to influence the work or the public perception of the EBA, and which are carried out via media outlets, meetings, conferences, campaigns, social events or similar.
6. The fourth paragraph of Article 16 of the Staff Regulations foresees that, in compliance with Regulation (EC) N° 45/20012 of the European Parliament and of the Council, each institution shall publish annually information on the implementation of the third paragraph, including a list of the cases assessed.

Cases in 2018

Andrea Enria, former Chairperson

7. On 6 December 2018, the Council adopted a decision appointing the Chairperson of the EBA, Andrea Enria, as head of the Supervisory Board of the European Central Bank. He took over that position on 1 January 2019.³
8. It is noted that the post of head of the Supervisory Board of the European Central Bank does not entail lobbying or advocacy activities vis-à-vis the EBA under paragraph 3 of Article 16 of the Staff Regulations.
9. Moreover, in accordance with the Decision on outside activities and assignments and on occupational activities after leaving the service, 'taking up employment at a European Union institution or body in the meaning of the Treaty on European Union and/or the Staff Regulations does not trigger the obligation to inform the Commission, as described in paragraph 1, as engaging in this activity does not lead to leaving the service of the Union for the purpose of applying Article 16, second paragraph, of the Staff Regulations. This is without prejudice of Article 40 of Annex VIII of the Staff Regulations' (paragraph 2 of Article 20).
10. On this basis, the departure of the former Chairperson and his taking up of duties as head of the Supervisory Board of the European Central Bank did not lead to a conflict with the legitimate interests of the EBA; and it was not necessary for the Appointing Authority to take a decision pursuant to Article 16 of the Staff Regulations and the Decision on outside activities and assignments and on occupational activities after leaving the service.

London, 6 February 2019

³ See press release here: <https://www.consilium.europa.eu/es/press/press-releases/2018/12/06/ecb-council-appoints-andrea-enria-head-of-the-supervisory-board/>