



EBA MB 2020 055 rev. 1

Management Board

11 May 2020/13:00-14:00

Location: Teleconference

EBA – Regular Use

Management Board meeting – Final Minutes

Agenda item 1: Welcome and declaration of conflict of interest

1. The Chairperson welcomed the Management Board (MB) Members. He informed the Members that the aim of the conference call was to discuss a notification under Article 16 of the Staff Regulations received by the Chairperson on 18 April 2020 from Adam Farkas, in which he informed the Chairperson of his intention to accept an appointment as non-executive Board Member of TheCityUK, and the next steps resulting from this notification.
2. None the of the MB Members declared any conflict of interest.

Agenda item 2: Decision concerning prohibition on engagement in an occupational activity (C-Point)

3. The Chairperson reminded the MB that on 2 August 2019, Mr Adam Farkas, former Executive Director of the EBA, informed the Chairperson of his intention to leave the EBA in order to take up a position of Chief Executive Officer (CEO) of the Association for Financial Markets in Europe (AFME). In accordance with Article 16 of the Staff Regulations, on 12 September 2019 the Board of Supervisors (BoS) adopted a decision permitting Mr Farkas to take up this position, but subject to significant restrictions. Given that the decision did not cover per se the appointment mentioned in the recently received notification, the Chairperson clarified that the BoS would need to decide within 30 working days (i.e. by the end of May) whether to forbid Mr Farkas from taking up the appointment, or to approve it and apply appropriate conditions. In accordance with the Staff Regulations, an opinion has been requested from the Joint Committee. Finally, the Chairperson noted the conclusions and recommendations of the European Ombudsman published in the morning before the conference call following the inquiry into the BoS decision from September 2019.
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4. The EBA Head of Legal Services (Legal) briefly summarised the advice set out in the cover note and the content of the draft decision. He mentioned that in accordance with the Staff Regulations, the Joint Committee had considered the notification and provided the opinion that had been circulated to the MB. The conclusions of the Joint Committee were addressed by the EBA staff in the draft decision, in particular related to Brexit work and a clear relation between the role of non-executive director of a representative organisation lobbying on EU financial services policy matters on behalf of the UK financial services sector, and the work of the former Executive Director. He also referred to a reputational risk and a potential conflict of interests given that the future employer was a private, non-profit company representing the UK financial services industry, and to the different balance between the EBA's interests and those of Mr Farkas compared with the situation relating to Mr Farkas's previous AFME CEO notification.
5. The Chairperson stressed that Mr Farkas could further perform his tasks within AFME regardless of the appointment in question. He also highlighted the lobbying activities of TheCityUK and reminded the MB of the restrictions in the BoS decision from September 2019 regarding lobbying and working on topics in which Mr Farkas had been engaged at the EBA.
6. The MB supported the EBA's draft decision. One Member questioned the enforceability of the decision. He also asked whether an external legal opinion would be beneficial for the case. Another Member proposed to redraft arguments related to the reputational risk of the EBA. This Member also requested clarification on the status of the Ombudsman's decision. Another Member proposed to link the current decision more closely to the September 2019 decision, in particular regarding the timelines for restrictions.
7. On the enforceability, the Head of Legal explained that there were very limited direct enforcement means that the EBA could use as Mr Farkas did not have any current pension rights as he did not serve in the EU institutions for at least 10 years and was not of pensionable age. With regard to the status of the Ombudsman's findings, the Head of Legal clarified that the Ombudsman's findings did not have direct consequences on the EBA's September 2019 decision, but the EBA had to respond to these findings and recommendations and subsequently, the Ombudsman would prepare a report which she would submit to the European Parliament. In addition, given that the findings were published, there were clear reputational consequences. He also mentioned that given the previous decision, the follow up work and expected input from the Commission services, the EBA did not consider a need for an external legal opinion.
8. The EC representative was of the view that if Mr Farkas would be allowed to take up the position in question, he could extensively contribute to lobbying activities and therefore, he supported the EBA's proposal of prohibition which would be both necessary as well as proportionate. He also suggested to link the proposed decision with the September 2019 decision, in particular as lobbying has been banned for 24 months after leaving the service at the EBA; highlight Mr Farkas' senior position at the EBA and be more explicit concerning the balance between the right of an individual to work, which would be in this case Mr Farkas'

position at AFME, and the legitimate need to effectively protect EBA's interests. He also asked for clarification as he was of the view that the position in question might be directly linked to Mr Farkas' current position and therefore, it should have been mentioned in this first notification in 2019. The EC representative asked the EBA to consider whether indications that Mr Farkas might act as an observer in TheCityUK was compatible with the restrictions set out in the BoS decision from September 2019. With regard to the process, the EC representative mentioned that it was a good practice before any prohibition decision was issued, to provide a right to be heard with the relevant individual.

9. The Head of Legal explained that the Staff Regulations did not expressly require any hearing with the individual but that a right to be heard should indeed be provided where a decision could have adverse consequences for the individual concerned, so the EBA could send the proposed decision to Mr Farkas for comments before the BoS took its final decision. The draft decision did not propose a period for the prohibition as Mr Farkas's notification would be rejected, and that decision would stand until any new notification was received for consideration by the EBA within the two-year period set by Article 16 of the Staff Regulations.
10. The Chairperson concluded by noting the agreement of the MB on the draft decision. He said that the EBA would redraft the decision in order to address the discussion, in particular to emphasise coherence of the decision with the BoS decision from September 2019; stress the lobbying aspect and therefore, the restriction to take up the position but also to mention that the BoS decision would strike the appropriate balance between the protection of the EBA's interests and the right of Mr Farkas to work. As next steps, the Chairperson clarified that the re-drafted decision would be submitted to the BoS for discussion and afterwards, if supported by the BoS, submitted to Mr Farkas for comments.

Participants at the Management Board conference call

11 May 2020

Chairperson Jose Manuel Campa
Alternate Chairperson Jo Swyngedouw

Member Sissy Papagiannidi
Member Maarten Gelderman
Member Raimund Roeseler
Member Martina Drvar
Member Jesper Berg
Alternate Thomas W. Andersen

European Commission representative Dominique Thienpont

EBA Staff

Director of Operations

Peter Mihalik

Philippe Allard; Jonathan Overett Somnier; Tea Eger; Cian Carroll

For the Management Board,

Done at Paris on 02 June 2020

[signed]

José Manuel Campa

EBA Chairperson