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President of the European Parliament
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5 March 2020

Subject: Resolution 2019/2950(RSP) on preventing post-public employment conflicts of interest

Dear President of the European Parliament

On 16 January 2020 the European Parliament adopted Resolution 2019/2950(RSP) on institutions and bodies of the Economic and Monetary Union: preventing post-public employment conflicts of interest. This resolution followed the adoption by the EBA of a decision imposing significant restrictions on its former Executive Director's taking up of the position of Chief Executive Officer of the Association of Financial Markets in Europe (AFME).

The EBA wants to emphasise that it takes seriously the issue of post-public employment conflicts of interest and recognises that this is an area which deserves public scrutiny. The resolution touches on the same issues that the EBA itself debated when the Board of Supervisors took a decision about Mr Farkas' intention to resign as Executive Director and to join AFME, namely how best to ensure the uniform application of rules across the EU to prevent post-public employment conflicts of interest.

We are committed to ensuring transparency of our decision and of how we implement it and monitoring its application. I have written separately to the Chair of the ECON Committee to set out the measures we are taking in that respect. We are contributing to the inquiry opened by the European Ombudsman into the decision and will consider carefully any observations that the Ombudsman may make on the process followed and measures taken by the EBA. The Parliament's resolution calls on the European Court of Auditors and the Commission to analyse and assess current practices and review the legal framework in this area: the EBA stands ready to contribute to any review carried out.

In relation to the EBA the resolution calls on the EBA Board of Supervisors and Management Board to review their decision and notes, in particular:

- the Parliament's concern about the conflict of interest that has arisen as a consequence of the appointment of the EBA Executive Director as AFME Chief Executive
- that in the case of Mr Farkas, prohibition of a direct move to AFME might have been considered under Article 21(3)(b) of Commission Decision C(2018)4048
- that it is often not possible to enforce conditions imposed upon post-public employment activities; and therefore encouraged EU institutions and agencies to consider the full range of tools made available under Article 16 of the Staff Regulations
- that all EU bodies should publish their internal rules for dealing with conflicts of interest on their websites and heed the European Ombudsman's 2017 recommendations concerning the publication of the annual information required under Article 16(4) of the Staff Regulations

The resolution also calls more broadly for effective and consistent application of the Staff Regulations in order to prevent conflicts of interest.

I would like to address the specific points raised in the resolution.

Review of the decision imposing restrictions on the taking up of the new occupational activity

As requested in the Parliament's resolution, the Board of Supervisors reviewed the decision during its meeting on 19 February, taking into account the elements raised in the resolution. However, as the resolution does not raise any new factual elements that Mr Farkas had not disclosed when the EBA took its decision or any new legal aspects, or new legal elements which were not considered at the time of the decision, the EBA is confident that the decision taken remains appropriate and in line with the current framework and that the conflict of interest rules were properly applied.

In addition, the nature of the legal framework in this area would not allow the EBA to revise its decision in the light of any review. This is because Article 16 of the Staff Regulations gives the EBA 30 working days to take its decision, otherwise the staff member's notification is implicitly accepted. Reopening a decision without a change in the factual position would amount to a breach of the time limit adopted by the legislators.

Prohibition of a direct move to AFME might have been considered under Article 21(3)(b) of Commission Decision C(2018)4048

The Management Board and Board of Supervisors were informed of the ability to impose both temporary restrictions and prohibitions, including one of the type set out in Article 21(3)(b) which excludes former staff from representing 'opposing parties'.

The approach taken by the Management Board in proposing its decision to the Board of Supervisors was consistent with that set out in Article 21(3) of Commission Decision C(2018) 4048 which requires the Appointing Authority to define “an appropriate balance between the need to ensure integrity through such temporary prohibitions and restrictions and the need to respect the former staff member’s fundamental right to engage in work and to pursue a freely chosen or accepted occupation”.

This requires the EBA to act in a way which is proportionate, and therefore not to exceed what is necessary in order to achieve the objective of ensuring integrity. The Board therefore sought to identify whether there was a set of restrictions which could achieve that objective without prohibiting the taking up of the AFME position. The Board considered that the substantial package of restrictions set a strict framework within which Mr Farkas, and thereby AFME, would need to operate and which would achieve that objective. Taking into account the measures put in place by the EBA to implement the restrictions (which I will describe further below), the Board of Supervisors continues to consider that the decision achieves the objective.

In particular, in addition to the ban imposed on lobbying EBA staff, Mr Farkas was not involved in policy and supervisory activities for the six months of his notice period which is the maximum period provided for under the Staff Regulations, and was excluded from the EBA offices for the final three months of that period. The Management Board also proposed, and the Board of Supervisors adopted, an 18-month restriction on Mr Farkas from assisting AFME members, and otherwise contributing to AFME’s activities on topics directly linked to work carried out by him during his last three years of service. This restriction was aimed at addressing the same objective of protecting the legitimate interests of the EBA as set out in the Parliament’s resolution, but in a more targeted and therefore proportionate way. The Commission had provided the publicly available reports on of post-employment activities of former senior managers as a reference for the assessment of the EBA.

Enforcement of conditions imposed upon post-public employment activities

The primary responsibility for applying restrictions applied to former staff lies on that staff member. A failure by former staff to comply with their obligations under the Staff Regulations makes them liable to disciplinary action which can result in written warnings, reprimands and, where staff are in receipt of a pension, reduction *pro tempore* of a pension. While the EBA expects that the interests of Mr Farkas and of AFME are to ensure the restrictions are adhered to, the EBA stands ready to take disciplinary action if breaches are identified. The EBA will also monitor Mr Farkas’ future occupational activities and take additional action if necessary.

Nevertheless, recognising the difficulties inherent in identifying any breaches committed by a former staff member working for a new employer and the limited disciplinary tools available in

relation to former staff, the EBA has put in place a range of measures to ensure that the restrictions are applied over the next two years. In particular:

- The AFME CEO and Chair will be asked to confirm, on a six-monthly basis, that the AFME CEO has not been involved in topics directly linked to work carried out by him during his last three years of service, and to inform the EBA of any changes to the AFME CEO's tasks
- The AFME CEO will also be asked to confirm on a six-monthly basis that no use has been made of EBA information or confidential insights
- The EBA has requested the AFME Chair to explain the measures that AFME has put in place to assure the effective implementation of the restrictions having regard to the AFME CEO's job description, in particular regarding assisting AFME members or contributing to AFMEs activities on topics directly linked to work carried out while at the EBA
- EBA staff have been informed of the restrictions and implementation measures including the need to report contacts from Mr Farkas to me through their Director
- Meetings, calls or other bilateral engagements with AFME will be approved in advance by a Director on advice from the EBA's Ethics Officer. Approval will require AFME to specify the topic(s), attendees and their organisational role, the involvement of AFME's CEO in the topics and preparation of the meeting/call, or engagement with participants in any of the topics in the agenda, and to agree to minutes being drafted and published (excluding commercially confidential information)
- Invitations to AFME events/meetings will need to be approved in advance by a Director on advice from the Ethics Officer. Approval will require AFME to specify the topic(s) and extent of participation of the AFME CEO in the meeting/event or its preparation; or engagement with participants in any of the topics in the agenda
- Where AFME requests to attend an EBA public hearing or other public event, AFME will need to state the involvement of AFME CEO in the topics and preparation for the public hearing
- AFME participation in the Banking Stakeholder Group will require confirmation from the AFME Chair that no indirect lobbying or advocacy by the AFME CEO will take place through the AFME member
- The EBA has informed the AFME Chair and CEO of these implementation measures. I have also sent the implementation measures to the Chair of ECON, the Chair of the Financial Services Committee, the Acting Director-General of DG FISMA and the Director-General of DG JUST, the Chairs of ESMA and EIOPA, the Chair of the Supervisory Board of the SSM, the Chair of the ESRB,

and the Chair of the Basel Committee, inviting them to contact the EBA's Ethics Officer if they identify concerns that the EBA's restrictions are not being complied with

- The EBA will use its annual report on Article 16 of the Staff Regulations to report on compliance with the restrictions adopted

By taking such active measures the EBA aims to ensure that there is transparency around how the restrictions are being applied, providing greater confidence that the legitimate interests of the EBA are being upheld than would be the case through pure reliance on a disciplinary regime which operates ex post.

Publication of internal rules for dealing with conflicts of interest the annual information required under Article 16(4) of the Staff Regulations

Finally, I note in relation to the call for agencies to publish information on how conflicts of interest are handled that the EBA's website contains the conflict of interest declarations for its senior management (Chairperson and Executive Director), for its directors and members of the Board of Supervisors and their alternates. The website also sets out the conflict of interest rules and the annual report under Article 16(4) of the Staff Regulations. This information can be found at <https://eba.europa.eu/about-us/organisation/organisation-chart/conflict-of-interest-policy>.

I hope that this letter has demonstrated how the EBA has taken its role on post-employment conflicts of interest with the utmost seriousness, applying the existing legal framework with careful consideration of all views raised in the Board meeting. Now that the decision has been taken, the EBA will continue to monitor its application to ensure that high standards expected from public servants are upheld.

Yours sincerely,

[Signed]

José Manuel Campa

Cc: Irene Tinagli, Chair of the Committee on Economic and Monetary Affairs, European Parliament