

THE CHAIRPERSON

Sven Giegold MEP
European Parliament
Rue Wiertz 60
B-1047 Brussels
Belgium

1 September 2020

Subject: Ombudsman findings and recommendations concerning Complaint 2168/2019/KR

Dear Mr Giegold,

I refer to the questions in your letter of 13 May 2020 concerning the response of the EBA to the findings and recommendations issued by the European Ombudsman on 7 May 2020 regarding the notification by the EBA's former Executive Director of his intention to become CEO of the Association of Financial Markets in Europe.

Your letter enquires regarding the consequences the EBA draws from the Ombudsman's findings and recommendations. Accordingly, I enclose a copy of my letter to the Ombudsman setting out the EBA's position and actions in response to those findings and recommendations.

Turning to your specific questions, firstly you ask how and when the EBA has given senior staff clarity over the criteria for when it will forbid moves to new posts outside the EBA in the future, and which criteria will be applied for that purpose. In this regard, even before the Ombudsman's findings and recommendations the EBA's conflict of interest and ethics policies applicable to its staff included stringent and clear rules to ensure very high standards of professional conduct. In that context, amongst other provisions, the EBA adopted by analogy the Commission Decision C(2018) 4048 on outside activities and assignments and on occupational activities after leaving the service, which provides inter alia that if the contemplated activity is related to the work carried out by the staff member during the last three years of service and could lead to a conflict of interest with the EBA's legitimate interests, the EBA can either forbid the staff member from taking up the activity or give its approval subject to any conditions it thinks fit. These rules have been set out in the EBA's Ethics Guide published on the EBA's website. Regarding more senior staff, the rules prohibit senior staff during the first 12 months after leaving the service from engaging in lobbying or advocacy, vis-à-vis staff of the EBA, on behalf of their business, clients or employers on matters for which they were responsible during the last three years in the service.



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The EBA also appreciates that the robust framework provided by conflict of interest and ethics policies remains effective only if understood and applied adequately. Accordingly for example we provide sessions to new and existing staff on the EBA's conflict of interest and ethics policies and require all staff to make annual declarations of interest, and the EBA's Ethics Officer provides updates to the EBA's Management Board on at least an annual basis and typically more frequently. Additionally as noted in the enclosed response to the Ombudsman, the EBA has been open to the option of forbidding its senior staff from taking up certain positions when they leave the EBA, in line with the Staff Regulations, and remains willing to do so where necessary. Indeed, on 27 May 2020 the Board of Supervisors adopted a decision prohibiting the former Executive Director from becoming a non-executive director of TheCityUK, an industry-led body representing UK-based financial and related professional services, before 1 February 2021 which is two years after the former Executive Director left the EBA's service.

Following the Ombudsman's recommendation that "*[t]o give clarity to senior staff, the EBA should set out criteria for when it will forbid such moves in future*", the EBA has adopted the policy annexed to my enclosed letter to the Ombudsman. EBA staff have been informed of this new policy and it is published on the EBA's intranet and website. The new policy applies not only to more senior staff but to EBA staff in general and is based on the applicable legal framework, in particular the requirements of Article 16 of the Staff Regulations and Article 21 of Commission Decision C(2018) 4048 final. Under the policy, where staff intend to leave the EBA to take up other employment, we assess whether the proposed move would give rise to an actual or potential conflict with the interests of the EBA. The policy sets out a framework and criteria to identify and establish the significance of potential conflicts. Where conflicts are identified, the next step in line with the legal framework is to strike 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. There is a wide range of measures which can be adopted to address conflicts of interest, and the type of measures adopted and their duration will reflect the assessment of the extent of conflicts of interest. This can include a prohibition from carrying out the proposed occupational activity, and while such prohibitions are likely to be used principally in relation to senior staff such as the Chairperson, Executive Director, directors and advisers, it is clear from the policy that prohibitions on taking up employment may also be imposed on other staff in appropriate cases.

Secondly your letter asks about the internal procedures the EBA will be putting in place to immediately cut off access to confidential information for staff known to be taking up employment outside the EBA. As described in my response to the Ombudsman, the EBA has operated such internal procedures in the case of other staff members who have had potential conflicts of interests, and those procedures have now been formalised and adopted and will be included in the EBA's Ethics Guide so that the steps to be taken are clear to all staff, and will be applied to senior management where appropriate. Access to confidential information via EBA (and, where relevant,

non-EBA) systems will be suspended immediately for staff known to be moving to another job unless they fall in to one of four specified categories in which there would be no conflicts of interest as further set out in my letter to the Ombudsman.

I trust that this information helpfully addresses your questions, and I remain at your disposal should you have further inquiries.

Yours sincerely,

[Signed]

José Manuel Campa

Encl: 2020 08 28 EBA letter to Ombudsman re Complaint 2168 2019 KR