

EBA/DC/2020/350

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EBA Regular Use

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# Decision of the European Banking Authority

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of Aug 21, 2020

concerning guidance on the assessment of post-employment restrictions and prohibitions

## The Acting Executive Director

**Having regard to** Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC<sup>1</sup>, in particular Article 68 thereof

Having regard to the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities (CEOS), laid down by Council Regulation (EEC, EURATOM, ECSC) No 259/68, and in particular Article 16 thereof

Having regard to Commission Decision C(2018) 4048 final of 29.6.2018 on outside activities and assignments and on occupational activities after leaving the Service, and in particular Article 21 thereof

## Whereas:

- (1) In order to ensure consistent treatment of staff who are known to be moving to a job outside the EBA which may give rise to conflicts of interest, it is desirable to set out guidance for EBA staff on how the EBA assesses those conflicts of interest and whether to apply post-employment restrictions and prohibitions.
- (2) The guidance should be based on the requirements of Article 16 of the Staff Regulations and on Commission Decision C(2018) 4048 final, in particular Article 21 of that decision. It should also explain how, in the context of the EBA's tasks and responsibilities, those requirements are

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1. OJ L331, 15.12.2010, p. 12.

most likely to give rise to conflicts of interest, and indicate the circumstances in which prohibitions and restrictions are likely to be applied.

(3) In order to ensure that EBA staff and potential recruits are aware of the guidance it should be published on the intranet and on the EBA's website, and incorporated into the Ethics Guide when it is next updated.

(4) The Staff Committee of the EBA has been consulted on the guidance.

**Has decided as follows:**

**Article 1**

The document "EBA criteria for assessing post-employment restrictions and prohibitions" annexed to this decision is adopted.

**Article 2**

This Decision enters into force the day following its adoption.

Done at Paris, **Aug 21, 2020**

[signed]

Peter Mihalik

Acting Executive Director

# EBA criteria for assessing post-employment restrictions and prohibitions

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*[These criteria will be incorporated into the EBA Ethics Guide<sup>2</sup>, supplementing section 9 on Leaving the EBA]*

1. When the EBA assesses the possibility of any actual or potential conflict of interest, the EBA applies the Commission implementing rules which require it to take into account factors such as<sup>3</sup>:
  - any relation between the occupational activity and the work carried out by the former staff member during the last three years of service
  - whether the occupational activity would involve working on specific files for which the former staff member was responsible during the last three years of service
  - whether the occupational activity would risk harming the reputation of the former staff member and the EBA, for example by retroactively casting doubt on the former staff member's impartiality while he or she was still in service, thereby tarnishing the EBA's image
  - the quality of a future employer (for example whether it is a public authority or a private/commercial company) or the situation of self-employment
  - whether the envisaged activity would involve representing outside interests vis-à-vis the institution
  - whether or not the envisaged activity is remunerated
2. Taking into account the EBA's role in regulating and supervising financial institutions, positions are most likely to give rise to conflicts where they are in the following kinds of organisations:
  - Credit institutions, investment firms, payment institutions and e-money issuers authorised in the EEA

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<sup>2</sup>

[https://eba.europa.eu/sites/default/documents/files/document\\_library/EBA%20DC%20271%20%28Decision%20on%20the%20Revised%20Ethics%20Guidelines%20for%20Staff%29.pdf](https://eba.europa.eu/sites/default/documents/files/document_library/EBA%20DC%20271%20%28Decision%20on%20the%20Revised%20Ethics%20Guidelines%20for%20Staff%29.pdf)

<sup>3</sup> Article 21(2) of Commission Decision C(2018) 4048 final of 29.6.2018 on outside activities and assignments and on occupational activities after leaving the Service.

- Other relevant financial institutions authorised in the EEA, where the staff member's EBA tasks over the preceding three years included, for example, AML/CFT, ECAIs, financial conglomerates, or securitisation, or participation in ESMA/EIOPA/ESRB's work, for example through participation in their boards, standing committees or in the Joint Committee
  - Private sector organisations which represent the interests of such financial institutions, such as industry associations, or which advise and represent them such as consultancies
  - Private sector organisations which are directly linked with the staff member's tasks, such as where a staff member is directly involved in the selection of a supplier or the management of a contract with a supplier
3. The level of conflict of interest is likely to be most significant where:
- staff members have a senior role at the EBA and influence over decision-making at the EBA
  - the staff member's future professional activities can be expected to have a material impact on the organisation's activities, e.g. where they will be in a senior management, senior adviser or senior control function position
  - the scale of the organisation's activities in the EEA is significant, for example an EEA credit institution which is a G-SII or O-SII
  - the scale of the influence of the organisation on industry practices and policy making is material, for example the organisation is an influential financial services lobbying body
4. Conflicts of interest are also likely to be most significant, and require more extensive restrictions or prohibitions where the staff member has knowledge of confidential information and/or influence on decision-making which are relevant to the future role, such as:
- information on individual financial institutions, in particular through supervisory roles (e.g. participation in supervisory/resolution colleges), and involvement in stress testing, mediations and breach of Union law investigations
  - influence through senior policy-making and management roles
  - involvement in the selection or management of commercial providers of services to the EBA or involvement in a legal dispute or seriously conflictive relationship with another entity
5. Notifications are assessed case-by-case. Where conflicts with the EBA's interests are identified, the Appointing Authority<sup>4</sup> adopts a decision which is based on an appropriate balance between

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<sup>4</sup> For staff the Appointing Authority (AA) is the executive director, for the Chairperson and the Executive Director the AA is the Board of Supervisors

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. The Appointing Authority takes into account the opinion of the Joint Committee.

6. Where actual or potential conflicts are identified, the principal kinds of measures that may be adopted are set out below. The type of measures adopted and their duration will reflect the assessment of the extent of conflicts of interest. The least restrictive measures that adequately protect the EBA’s interests will be used.

- Restrictions of between six months and two years on lobbying or advocacy of the EBA or its staff on matters for which the staff member was responsible during up to the last three years of service
- Restrictions excluding the staff member for between six months and two years from professional contacts with EBA colleagues or from representing opposing parties
- Restrictions for between six months and two years prohibiting the staff member from dealing with files, cases or matters related to the work carried out by him or her during up to their last three years of service, including related or subsequent cases and/or court proceedings
- Prohibitions from carrying out the proposed occupational activity. Where appropriate, this may take into account any part of the staff member’s notice period during which the staff member is relieved of the duties which give rise to the conflict. Any cooling-off periods would not normally exceed the lesser of: (i) half of the duration of the staff member’s service with the EBA; or (ii) the two year period after the staff member has left the EBA’s service. Such prohibitions are likely to be used principally in relation to senior staff such as the Chairperson, Executive Director, directors and advisers based on the non-exhaustive examples set out in the table below.

Post title	Prohibitions	Other restrictions
Chairperson Executive Director	12-24 months in relation to an EEA credit institution or significant investment firm or an entity providing financial services consultancy services to such firms	12-24 months: engaging in lobbying or advocacy, vis-à-vis staff of their former institution, on behalf of their business, clients or employers on matters for which they were responsible during the last three years in the service
	6-12 months in relation to any other EEA financial institutions or an entity providing financial services consultancy services to such firms	
	12-24 months in relation to any entity engaged in lobbying in relation to the EBA, or consultancy and/or advocacy vis-à-vis the EBA	12-24 months: professional contacts with EBA colleagues and representing opposing parties

Post title	Prohibitions	Other restrictions
Director, Adviser or equivalent <sup>5</sup>	<p>6-12 months in relation to an EEA credit institution or significant investment firm or an entity providing financial services consultancy services to such firms</p> <p>3-6 months in relation to working for any other financial institution [or an entity providing financial services consultancy services to them</p> <p>6-12 months in relation to any entity engaged in lobbying in relation to the EBA, or consultancy and/or advocacy vis-à-vis the EBA</p>	<p>6-12 months: engaging in lobbying or advocacy, vis-à-vis staff of their former institution, on behalf of their business, clients or employers on matters for which they were responsible during the last three years in the service</p> <p>6-12 months: professional contacts with EBA colleagues and representing opposing parties</p>

7. In addition, the ongoing duty under Article 16(1) of the Staff Regulations to “behave with integrity and discretion as regards the acceptance of certain appointments or benefits” may require a staff member not to advise or work on behalf of a new employer or clients on particular files or matters in which the staff member participated personally and substantially and that would entail relying upon information received while in the EBA’s service that has not been made public. In appropriate cases where precise and defined risks of an ongoing nature can be identified, the Appointing Authority may provide advice on how this duty applies to a staff member. Where a staff member, or former staff member, has questions about the application of this duty, they should contact the Ethics Officer for advice.

<sup>5</sup> In accordance with EBA DC 2019 253, these posts [are filled from grade [AD12]