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European Banking Authority
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Dear Mr Campa,

Cooling-off periods for outgoing senior officials

We are writing to you to share our concern in relation to a news report that the outgoing Executive Director of the European Banking Authority is preparing to join a large financial markets lobbying organisation (“Top EU regulator Farkas to head banking lobbying group AFME”, Sky News, 26 Aug 2019).¹

As you are aware, the Executive Director of the EBA is required after leaving service “*to behave with integrity and discretion as regards the acceptance of certain appointments or benefits*” (Staff Regulations, Article 16).² In our view, moving directly from senior banking supervisor to senior banking lobbyist would not demonstrate these qualities, quite the opposite.

From our understanding of the relevant procedures, if the report is true and the official in question has notified their intended move within the last 30 days, EBA’s appointing authority will now be deliberating on whether to allow this appointment, allow it with conditions, or prohibit it.

As a public interest organisation, **we hope that a high profile move of this sort will be prohibited as a matter of course**. In any case, we would like to bring the following general comments to your attention:

- The length of any cooling-off period for outgoing senior officials taking on a new occupation should be proportionate to the threat to the public interest posed by the official’s former position. As the OECD has noted, “*Public officials in risk areas such as regulation or contract administration may require specific restrictions, including longer time limits*”.³

¹ <https://news.sky.com/story/top-eu-regulator-farkas-to-head-banking-lobbying-group-afme-11793826>

² <https://eba.europa.eu/documents/10180/15754/Staff+Regulations+2014+EN.pdf>

³ OECD 2010 “Post-Public Employment Good Practices for Preventing Conflict of Interest”, <https://doi.org/10.1787/9789264056701-en>

- Transparency International recommends a minimum two-year cooling-off period for public officials. Two years is the standard in several EU member states including Spain, the Netherlands, and the UK. Some countries have shorter periods, others have longer (three years in France).
- A standard time period may not, however, be suitable for situations where the duration of the threat to the public interest posed by the official's former position is uncertain. Transparency International recommends that cooling-off restrictions "*should consider the life-span of the topic and last until the issue is finished or made public*".⁴
- For EBA and bank lobbyists alike, the main topic is financial regulation which has a very long and sometimes uncertain life-span. The cycle from political guidelines to legislation, implementing rules, reviews and revisions can easily exceed five years. Policymaking in some core areas of banking regulation and supervision is never finished as it is, in effect, a continuous process.

Article 16 of the EU Staff Regulations, as they apply to EBA staff and the Executive Director, sets in principle a cooling-off period of 12 months for those wanting to lobby their former organisation, with a mandatory two-year period in which the official must notify the EBA's appointments authority of any new occupation, so that a prohibition or conditions can be applied if needed.

Where there is not a prohibition, we feel that **the position of Executive Director of the EBA should carry a leaving restriction on lobbying financial policymakers of between two and five years** in order to be proportionate to the high threat level from the topic (bank supervision) and to fit the long life-cycle of EU financial legislation and policymaking. Any less could cast doubt on the EBA's independence and raise legitimate questions about why the EBA follows a lower governance standard in this regard than is applied in many Member States.

Further, Article 17 of the Staff Regulations prevents former officials from making "*unauthorised disclosure of information received in the line of duty, unless that information has already been made public or is accessible to the public*". As the OECD has noted, such obligations are difficult to enforce (if they were easy, the recruitment of former officials would be much less attractive to lobbying firms). We therefore ask the EBA, in cases where it decides not to prohibit a move, to consider which conditions can be imposed that will facilitate monitoring of the former official's compliance with relevant Staff Regulations. We would not exclude that conditions might apply to the staff of the official's new lobby organisation, for example by restricting their attendance in advisory groups or other roles of influence while under the responsibility of the former official.

There should be a clear warning that a breach of EU Staff Regulations or of conditions set under them can be met with sanctions, including removal from the lobbyists register, reduction of pension rights, prohibition on taking public office or consultancy contracts from the EU, and fines and sanctions applied to the official's new employer.

⁴ Transparency International Working Paper 06/2010, Regulating the Revolving Door, https://www.transparency.org/whatwedo/publication/working_paper_06_2010_regulating_the_revolving_door

The EBA has in the past suffered from a perception of industry-bias in its Banking Stakeholders Group and been charged with maladministration by the EU Ombudsman in the way it appoints members of this group.⁵ Adopting the highest governance standards in this area will help to protect the reputation of EBA. We believe the EBA has a moral duty always to seek to reduce the imbalance of interests between the financial industry and other stakeholders, which ultimately affects the public's level of confidence in EU banks.

We realise that you cannot comment on press articles or individual cases. We would, however, be grateful for your response to the general points in this letter and a reassurance that our concerns have been shared with the relevant people in EBA's appointing authority. We will, of course, monitor any notifications required by the fourth paragraph of Article 16 of the Staff Regulation and be ready to respond, we hope in a positive manner, to any public announcements as appropriate. In the meantime, we will publish this letter on our organisation's website.

Yours sincerely,



Benoît Lallemand
Secretary General, Finance Watch

⁵ <https://www.ombudsman.europa.eu/en/decision/en/52432>