

THE ALTERNATE
CHAIRPERSON



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Philippe Lamberts
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Greens/EFA Members of the European Parliament

EBA-2019-D-2695

27 November 2019

Subject: Declaration of Interest and Banco Santander shares

Dear Mr Lamberts, Mr Giegold, Mr Urtasun,

Thank you for your letter dated 6 November 2019 to José Manuel Campa requesting further clarification regarding his declaration of interest as EBA Chairperson.

Since I chaired the discussion in the Management Board which led to the adoption of the decision on Mr Campa's conflict of interest we thought it appropriate that I reply to your questions.

Let me first emphasise that Mr Campa is required to dispose of his interests in his former employer, Banco Santander, within 30 days of the ending of the legal limits which currently prevent him from disposing of his interest and which I will explain.

Recognising the conflicts of interest that arise in this particular case, the EBA decided to manage the conflict by imposing, in addition, substantial restrictions on the Chairperson's role in relation to Banco Santander. The restrictions which the EBA has applied are:

- A two-year ban on contact with Banco Santander. After this restriction expires the EBA will be fully transparent about meetings held by the Chairperson with Banco Santander in line with its existing practice of publishing information on meetings by EBA staff with industry bodies.
- A requirement for the Chairperson to recuse himself from any decision-making, and where necessary hand over to the Alternate Chairperson, in relation to any matter which is of direct and individual concern to Banco Santander. This restriction remains in place for as long as the Chairperson has an interest in shares in Banco Santander.
- The no-contact requirement applies for two years in order to align this 'cooling off' period with the two-year period during which former EBA staff are required to notify future occupational

activities under Article 16 of the Staff Regulations/CEOS and reflects the diminishing size of the financial interest. The EBA is fully transparent about contacts with credit institutions and other stakeholders, publishing details of meetings held and subjects covered both for the Chairperson and other staff.

The EBA takes conflicts of interest seriously and considers that these restrictions are appropriate in order to manage the conflicts not only in consistency with the requirements of the Staff Regulations and Conditions of Employment of Other Servants (CEOS) but also with the legislative framework for remuneration in the banking sector. The EBA also promotes transparency in this area, publishing the conflicts declarations made by its senior management and members of its Board of Supervisors, and any measures taken to manage those conflicts.

Let me turn to the specific questions raised in your letter which will also explain how the Management Board reached its decision.

Staff Regulations requirement not to keep or acquire interests in undertakings which are subject to the authority of the EBA

As your letter states, the Staff Regulations/CEOS require the EBA Chairperson not to keep or acquire interests in financial institutions of such kind or magnitude as might impair his independence.

The EBA's policy is to require all staff to divest themselves of holdings in the banking sector before they join the EBA. Mr Campa accordingly disposed of his existing holdings prior to 1 May 2019 when he took up his position.

However, Mr Campa and the EBA as well as Banco Santander also have to recognise the important remuneration requirements applied to credit institutions under, in particular, Articles 92 and 94 of Directive 2013/36/EU (the Capital Requirements Directive) which were introduced as a result of the financial crisis. These include obligations to pay to staff whose professional activities have a material impact on their risk profile of an institution (a "material risk-taker") a substantial portion of at least 50% of the variable remuneration as a balance of shares and other instruments and to defer a substantial portion of the variable remuneration component over a period of three to five years. The deferral period is in addition followed by a mandatory retention period. The purpose of these requirements is to align the incentives of those staff with the risk appetite, values and long-term interests of the credit institution.

These requirements have been transposed into Spanish law which requires credit institutions to establish and apply a global remuneration policy which complies with the principles established in the Capital Requirements Directive. The EBA has also issued guidelines on these remuneration requirements which provide in particular that the retention period should be a minimum of one year unless the deferral period is at least five years. Banco Santander is required to comply with

Spanish law transposing the Capital Requirements Directive requirements, and to make every effort to comply with the EBA guidelines in accordance with Article 16(3) of the EBA’s founding regulation, Regulation (EU) No 1093/2010. The competent authority for prudential supervision of Banco Santander, the European Central Bank, has also confirmed that it complies with the EBA guidelines. Banco Santander’s published policy on deferral and retention is consistent with these requirements.

The remaining interest of the EBA Chairperson relates to such deferred shares which have remaining deferral and retention requirements of between one and four years and must not be disposed of before the period between February 2020 and February 2023.

The Chairperson is therefore unable to dispose of his interest in Banco Santander without Banco Santander waiving the application of its policy in a way which would no longer be consistent with the requirements of the Capital Requirements Directive and the EBA’s guidelines.

The restrictions imposed on the Chairperson therefore seek to reconcile these requirements with the Staff Regulations/CEOS by ensuring that the Chairperson’s independence in the performance of his duties is not impaired.

Nominal value and number of shares and the retention period until February 2023

You note in your letter that the nominal value and number of shares has been redacted from the conflict of interest declaration published on the EBA’s website. Recognising the public interest in this matter, the EBA will update the declaration to show the remaining interest held in Banco Santander through to February 2023 which is as follows:

Number of shares	Required to be held until
72 612	February 2020
20 267	February 2021
13 369	February 2022
6 222	February 2023

As you see, the Chairperson’s interest in Banco Santander shares will fall substantially within two years, and therefore the Management Board considers a two-year restriction on contacts with Banco Santander appropriate, taking into account that the ongoing requirement for the

Chairperson to recuse himself from any decision-making relating to Banco Santander. This non-contact requirement is in line with the ‘cooling off’ period during which former EBA staff are

required to notify future occupational activities under Article 16 of the Staff Regulations/CEOS and reflects the diminishing size of the financial interest. As I have noted above, the EBA is fully transparent about meetings held with credit institutions and other stakeholders, whether by the Chairperson or other EBA staff.

I trust that this response addresses the concerns that you raise and demonstrates the care that the EBA took over this decision and our concern for ensuring that the EBA continues to be seen to be acting with integrity and that the interests of the EBA and of the EU are protected.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'Jo Swyngedouw', is positioned below the text 'Yours sincerely,'.

Jo Swyngedouw