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DECISION OF THE EUROPEAN COMMISSION

**on Former Commissioner Günther Oettinger's post term of office professional activity
as Director of 'Oettinger Consulting, Wirtschafts- und Politikberatung GmbH'**

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on European Union,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to the Commission Decision of 31 January 2018 (C(2018) 700 final) on a Code of Conduct for the Members of the European Commission, and in particular Article 11(3) thereof,

Whereas:

- 1) According to Article 245(2) of the Treaty on the Functioning of the European Union, the Members of the Commission, when entering upon their duties, shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and, in particular, their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.
- 2) Article 339 of the Treaty on the Functioning of the European Union provides that the Members of the institutions of the Union shall be required, even after their duties have ceased, not to disclose information of any kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.
- 3) Article 11 of the Code of Conduct for the Members of the European Commission establishes a specific procedure for the assessment of planned professional activities which the Members or former Members of the Commission intend to take up after they have ceased to hold office. The Commission shall examine the information provided in order to determine whether the nature of the planned activity is compatible with Article 245 of the Treaty on the Functioning of the European Union. If the planned activity is related to the portfolio of the Member or former Member, the Commission shall decide only after having consulted the Independent Ethical Committee unless the planned activity falls within the exceptions foreseen in paragraph 3, second subparagraph, litt. (a) to (f).
- 4) Article 12 of the Code of Conduct establishes that, on request of the President, the Independent Ethical Committee shall advise the Commission on any ethical question related to the Code and provide general recommendations to the Commission on ethical issues relevant under the Code.

- 5) On 26 July 2019, during his term of office, Commissioner Oettinger informed the President of the Commission of the registration of a company called “*Oettinger Consulting, Wirtschafts- und Politikberatung GmbH*” in the district court of Hamburg (Amtsgericht Hamburg). Commissioner Oettinger explained that the registration of the company had taken place in anticipation of possible future activities. At that moment, according to the information provided by Mr Oettinger, the matter concerned only the establishment of a legal entity with his financial contribution, while Mr Oettinger would not perform any business activities through the company.
- 6) On 29 July 2019, the President of the Commission replied to Commissioner Oettinger, drawing his attention to the particularities of this situation, recalling the legal obligations applying to Members of the Commission as well as explaining the need to avoid any situation of conflict of interest before the end of the term of office and to avoid establishing any link between the performance of the duties as Commissioner and the company. Moreover, the President informed Commissioner Oettinger that he would seek the opinion of the Independent Ethical Committee on Commissioner Oettinger’s possible future activity for this company and on the consequences of this situation for the period until the end of the Commissioner’s term of office. In his letter, the President added that this consultation of the Committee was without prejudice to possible further consultations after Commissioner Oettinger actually notified an envisaged activity under Article 11 of the Code of Conduct for the Members of the Commission.
- 7) On 31 July 2019, the Committee was consulted to deliver an opinion on two questions. The first question was what measures should be put in place to prevent, or address, a conflict of interest until the end of Commissioner Oettinger’s term of office. The second was whether Commissioner Oettinger’s envisaged activity would be compatible with Article 245 of the Treaty on the Functioning of the European Union.
- 8) The Committee replied on 8 August 2019 to the first question, namely on the measures that should be put in place to prevent, or address, conflicts of interest until the end of the Commissioner’s term of office. Following the Committee’s opinion, the President of the Commission informed Commissioner Oettinger about the opinion and the conditions to be observed until the end of the Commissioner’s term of office.
- 9) Concerning the compatibility of the future activity envisaged by the then Commissioner Oettinger with Article 245 of the Treaty on the Functioning of the European Union, the Committee considered that it needed additional information in order to be able to deliver an opinion. On 2 September, Commissioner Oettinger was therefore asked to provide the additional information requested by the Committee. Mr Oettinger replied to the Committee’s questions on 16 September 2019 and was heard by the Committee on 19 September 2019.
- 10) On 30 September 2019, the Committee replied to the second question raised by the President of the Commission. The Committee considered that Commissioner Oettinger had not notified a precise activity yet or shared any concrete plans for specific activities after his term of office. The Committee concluded that it could not give a favourable opinion on the compatibility of a potentially wide range of activities with Article 245 of the Treaty on the Functioning of the European Union (TFEU). The Committee underlined that it would consider the issue again and deliver a more detailed opinion if Commissioner Oettinger, at a later stage, would notify an activity

and describe more precisely in which specific sectors or policy areas it would take place.

- 11) On 24 October 2019, the President of the Commission informed Commissioner Oettinger of the Committee's opinion and asked Mr Oettinger to provide the Commission, as soon as possible after his term of office, and before he started an activity, with the information which the Independent Ethical Committee had deemed necessary to be in a position to deliver an opinion.
- 12) On 2 March 2020, Former Commissioner Oettinger notified the Commission of his activity as Director (*'Geschäftsführer'*) of 'Oettinger Consulting' in addition to being one of the two founders and shareholders of the company. He informed the Commission that his company's first client would be a large, family-owned, commercial company active in the food sector. He said that he was well aware of his obligations as former Member of the Commission, notably those set out in Article 245 TFEU and Article 11 of the Code of Conduct. He signalled his readiness to render regularly account of his activities to the Commission.
- 13) In view of Former Commissioner Oettinger's portfolios of 'Energy', 'Digital Economy and Society' and 'Budget and Human Resources', it was considered that the precise activity consisting of providing consultancy services to a company in the food sector did not necessarily require a consultation of the Independent Ethical Committee on the basis of Article 11(3) of the Code of Conduct for the Members of the Commission. It was also considered that a prior request for approval of each individual client, which Oettinger Consulting would envisage to accept in the future, did not seem feasible and proportionate.
- 14) Against this background, on 6 April 2020, at the request of the President of the Commission, on the basis of Article 12 of the Code of Conduct for the Members of the Commission, the Committee was asked to provide an opinion on the conditions and restrictions which should be imposed on Former Commissioner Oettinger in the present case and more generally on other former Members who might envisage similar activities in the future, as regards consultancy or similar services, in order to ensure compliance with Article 245 of the Treaty on the Functioning of the European Union and Article 11 of the Code of Conduct.
- 15) The Committee delivered its opinion on 19 June 2020. The Committee established the facts regarding Former Commissioner Oettinger's envisaged activity and noted that, in spite of Mr Oettinger's specific function in the company notified on 2 March 2020, the scope of the activities of Mr Oettinger's company and of his activities as Director of the company remained very broad and unspecified. According to the information provided by Mr Oettinger, these services could range from auditing services, tax and legal advice to more general consultancy services on economic and political matters and would not target specific clients, economic sectors or policy areas.
- 16) The Committee noted that Mr Oettinger had informed the Commission about a first client but did not provide any further details on the mandate received from this client. The Committee underlined that it was not possible to declare the activity as such compatible with Article 245 TFEU given the potentially wide range of activities of the company and the obvious risk of overlap with areas for which Mr Oettinger had been responsible as Commissioner before. The Committee noted, however, that the

potential wide range of activities left room for Mr Oettinger to focus on activities which would be compatible with Article 245 TFEU. Therefore, the Commission would have to impose restrictions and conditions, which would rule out activities in areas, and for clients, which would not be compatible with Article 245 TFEU.

- 17) The Committee continued recalling the applicable legal context. In line with previous opinions, it noted that the Members of the Commission had a right to engage in work and to pursue a freely chosen or accepted occupation after the term of their office, while this right needed to be balanced with the obligations set out in Article 245 TFEU and the Code of Conduct for the Members of the European Commission. The Committee underlined that the balance had to be proportionate. It could be achieved by imposing restrictions and conditions on a new professional activity where those restrictions and conditions would be more proportionate than a simple prohibition or authorisation of an activity.
- 18) The Committee underlined that the Code of Conduct provided the framework in which the Commission had to establish this balance between the rights and obligations of its Members with regard to concrete, new activities. It noted that this balance could not be established based on an automatic scheme, but required a case-by-case approach, which took into account the context and particularities of each individual case.
- 19) The Committee noted that, in the present case, the Commission's consultation was twofold: on the one hand, the Commission sought a general opinion on the restrictions and conditions which could be typically imposed on consultancy services envisaged by former Members concerning potentially a wide range of clients and covering a wide range of topics; on the other hand, the Commission sought an opinion on the restrictions and conditions, which should apply to the concrete consultancy activity envisaged by Former Commissioner Oettinger.
- 20) Against this background, prior to drawing its operational conclusions on Former Commissioner Oettinger's specific situation, the Committee considered, in general terms, the restrictions which should be imposed on consultation activities: (a) as concerns lobbying or interest representation, (b) based on the obligations of confidentiality and discretion; (c) based on the principles of collegiality and discretion; and (d) based on the general duties of integrity and discretion. While reasoning in general terms, the Committee assessed the restrictions with a precise reference to Commissioner Oettinger's situation.
- 21) Finally, the Committee recommended that, in order to ensure a credible implementation of the appropriate restrictions, the Commission authorises consultancy activities only on the condition that former Members inform the Commission every 6 months, for a period of 2 years after the end of their term of office, through a list of clients and mandates that they accepted from these clients. Given the potentially sensitive character of such commercial and personal information and the privacy of third parties, this information should be treated confidentially by the Commission, in case former Members ask for such confidentiality.
- 22) As regards Former Commissioner Oettinger's specific situation, the Committee formulated recommendations for restrictions it deemed appropriate deriving from its position on consultation activities in general.

- 23) The Commission shares the Committee's opinion. As regards Former Commissioner Oettinger's envisaged activity as Director of 'Oettinger Consulting, Wirtschafts- und Politikberatung GmbH', the conditions and restrictions decided are based upon the Committee's opinion.

HAS DECIDED AS FOLLOWS:

Article 1

Former Commissioner Oettinger's envisaged activity as Director of 'Oettinger Consulting, Wirtschafts- und Politikberatung GmbH' is compatible with Article 245(2) of the Treaty on the Functioning of the European Union, subject to the respect of the conditions and restrictions set out in Article 2.

Article 2

Former Commissioner Oettinger:

- a. shall not lobby the Commission, its Members or staff, or any of its Executive Agencies on any matter on behalf of Oettinger Consulting or clients of Oettinger Consulting until 30 November 2021;
- b. shall strictly respect Article 339 TFEU regarding the obligation of professional secrecy.
- c. shall not disclose what was said at meetings of the Commission.
- d. shall not exploit any insights of a confidential or sensitive nature in policy, strategy or internal processes that he obtained during his terms of office.
- e. shall not accept contracts from clients which concern areas in which he has obtained confidential or sensitive information or insights during his terms of office and for which this information or these insights are essential to provide appropriate advice. This refers notably, but not exclusively, to advice or work on specific files in which Former Commissioner Oettinger was personally involved through his portfolio responsibilities or through his collegial responsibility as Member of the College (e.g. legislative procedures or negotiations, decisions, contracts, policy files, grants, cases, claims, investigations) which are ongoing or, if those are already closed, which are directly connected to them.
- f. shall not provide advice to clients, which serves to question or contest decisions and activities that the Commission adopted or performed while he was a Member of the Commission.
- g. shall not, on behalf of clients of the company, contact the services previously under his portfolio responsibilities, including those held in a previous term of office, until 30 November 2021. This concerns the Directorates-Generals for Energy, for Communications Networks, Content and Technology, for Informatics; for Budget, for Human Resources and Security, for Translation, for Interpretation, the European Anti-Fraud Office, the Offices for Infrastructure and Logistics in Brussels and Luxembourg, the Office for the Administration and Payment of

Individual Entitlements, the European School of Administration and the European Personnel Selection Office.

- h. shall not accept contracts from clients in relation to areas for which he was responsible or provide services to clients in relation to other areas, if these clients were major stakeholders in his former areas of portfolio responsibility. ‘Major stakeholder’ is to be understood in this context in terms of significance of the stakeholder for the specific market, significance of the impact of the Commission activities in this area on the stakeholder and significance of the involvement of the stakeholder in the EU decision-making process in this area such as lobbying activities towards the Commission. The areas concerned are energy, the digital single market as well as budget and human resources. This restriction should apply until 30 November 2021.
- i. shall inform the Commission in January, July and December 2021, about his clients and contracts. The Commission will treat this as commercial and personal information in line with the existing legislation, in case Mr Oettinger asks for the protection of this information.
- j. shall continue to respect the duty to behave with integrity and discretion as regards the acceptance of certain contracts or clients after 30 November 2021, given that the obligations of Article 245 TFEU are not limited in time.
- k. shall inform the President of the Commission, according to Article 13(2) of the Code of Conduct in case of doubt with regard to the application of the Code of Conduct or the application of this decision, before acting on the matter relating to which the doubts arise.

The conditions and restrictions set out in lit. a), e), f), g) and h) shall also apply to Former Commissioner Oettinger’s company.

Done at Brussels, on 30 September 2020.

The President
Ursula von der Leyen