



Brussels, 24.3.2021
C(2021) 9008 final

DECISION OF THE EUROPEAN COMMISSION

**on Former Commissioner Günther Oettinger's post term of office professional activity
as lawyer (*'Rechtsanwalt'*)**

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 set out 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 29 October 2020, Former Commissioner Günther Oettinger informed the Commission about his intention to establish himself as lawyer (*‘Rechtsanwalt’*), in Hamburg, in the context of his post term of office professional activities. In his notification, Mr Oettinger specified that to that date, he had had no contracts with clients and no concrete intentions in this regard. He further emphasised his full awareness 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 added that he would report to the Commission, on a regular basis, on the activities he would undertake as lawyer.

- 6) The potentially broad range of clients and topics covered by the activity as lawyer, combined with the specific ethical rules which apply to the profession of lawyer, raised the question whether and which restrictions are necessary and appropriate to ensure the compatibility of the activity as lawyer with Article 245 of the Treaty on the Functioning of the European Union.
- 7) Against this background and on the basis of Article 12 of the Code of Conduct for the Members of the Commission, the Independent Ethical Committee was consulted on 23 November 2020 to provide an opinion on the appropriate conditions and restrictions to be adopted in a Commission decision authorising an activity as lawyer. The purpose of the consultation was to guide the Commission on Mr Oettinger's envisaged activity and, more generally, on other situations of former Members of the Commission who might also envisage, in the future, to practice as a lawyer.
- 8) The Committee delivered its opinion on 18 December 2020. The Committee (i) established the facts regarding Former Commissioner Oettinger's envisaged activity, and namely the regulatory framework applicable to lawyer practice in Germany, (ii) recalled the legal context applicable, (iii) replied to the Commission's general question on the restrictions and conditions which are necessary in order to ensure the compatibility of any activity as lawyer with Article 245 of the Treaty on the Functioning of the European Union and (iv) drew eventually its conclusions on Mr Oettinger's notified activity as lawyer.
- 9) The Committee underlined that, according to the German Federal Lawyers' Act, a lawyer is an 'independent agent in the administration of justice' and holds a liberal status. The Act also defines a lawyer as an 'independent advisory and representative in all legal matters'. In order to be allowed to practise and have 'the right to bear the professional title of' lawyer, a person needs to apply for admission to the Bar, fulfil various legal criteria set by law and finally receive a certificate of admission to the legal profession issued by the competent Bar. The same Act provides that a lawyer's main activities are to 'appear before courts, arbitral tribunals or (other) authorities' as well as give legal advice and represent clients in justice. As regards the rules applicable to these activities, Article 43a of the Act states that lawyers are obliged to ensure their independence, observe professional secrecy and objectivity and may not represent conflicting interests. They must follow the Code of Professional Conduct at all times. Article 43 of the Act specifies that 'a *Rechtsanwalt* must practise his profession conscientiously. A *Rechtsanwalt* must show that he is worthy of the respect and the trust that his status as *Rechtsanwalt* demands, both when practising and when not practising his profession.' Moreover, according to Article 45(1) of the Act, and following the specificities applicable to Mr Oettinger's case, he may not practise if he has already been involved 'in the same legal matter as [...] a member of the public service'. Finally, according to Article 44 of the Act, a *Rechtsanwalt* can decline a mandate.

- 10) The Committee continued recalling the applicable legal context. In line with previous opinions, the Committee 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. 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.
- 11) Given the wide range of possible activities, areas of work and clients that a professional activity as lawyer can in general entail, and that those activities are comparable to other independent activities with a potentially very broad range of clients and areas of work already examined by the Committee, the Committee followed, to a large extent, its previous opinion of 19 June 2020 on consultancy services by former Members of the Commission in general (opinion also delivered in the context of a notification submitted by Former Commissioner Oettinger)¹.
- 12) The Committee considered, in general terms, the restrictions and conditions which should be imposed on the profession of lawyer: (i) as concerns lobbying or interest representation, (ii) based on the obligations of confidentiality and discretion; (iii) based on the principles of collegiality and discretion; and (iv) based on the general duties of integrity and discretion. The Committee recommended that the Commission should examine in all cases of former Members of the Commission performing activities as lawyers whether these restrictions and conditions should be imposed.
- 13) Specifically on Former Commissioner Oettinger's envisaged activity as lawyer, the Committee noted that its scope, as described in his notification, remained very broad and unspecified. His activity could possibly entail many different aspects, such as representing clients in court or only giving legal advice in a wide range of different areas. Given the potentially wide scope of activities and clients, there would possibly be overlaps with areas for which Mr Oettinger had been responsible as former member of the Commission. The Committee considered nevertheless that the potential wide range of activities and legal areas also leaves room for Mr Oettinger to focus on activities which would be compatible with Article 245 of the Treaty on the Functioning of the European Union.
- 14) Against this background, and taking into account the analysis mentioned above, the Committee concluded on a list of restrictions and conditions which the Commission should impose on Former Commissioner Oettinger's envisaged activity as lawyer

¹ Opinion of the Independent Ethical Committee of 19 June 2020 on Former Commissioner Günther Oettinger's envisaged post term of office activity as Director of 'Oettinger Consulting, Wirtschafts- und Politikberatung GmbH' and as regards consultancy services by former Members of the Commission in general (https://ec.europa.eu/info/sites/info/files/cei_oettinger_consulting_19062020_en.pdf).

(‘*Rechtsanwalt*’), in order to rule out activities in areas, and for clients, which would not be compatible with Article 245 of the Treaty on the Functioning of the European Union.

- 15) The Committee noted finally that, in his notification to the Commission of 29 October 2020, Former Commissioner Oettinger had expressed his readiness to inform the Commission regularly about his activities. In this context, and in line with the recommendation in its previous opinion mentioned above, the Committee recommended the inclusion, in the Commission’s decision, of an obligation of regular information by Mr Oettinger, every 6 months until 30 November 2021, on the scope of his activity, in as much as he can share information in accordance with his legal obligations under the German Federal Lawyers’ Act. 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 Mr Oettinger would ask for such confidentiality.
- 16) The Commission shares the Committee’s opinion and considers that the balance between Former Commissioner Oettinger’s right to pursue his professional career and the obligations deriving from Article 245 of the Treaty on the Functioning of the European Union requires a carefully elaborated list of restrictions and conditions, taking into account the potentially wide range of possible activities, areas of work and clients. The list of conditions and restrictions decided are based upon the Committee’s opinion.

HAS DECIDED AS FOLLOWS:

Article 1

Former Commissioner Günther Oettinger’s envisaged activity as lawyer (‘*Rechtsanwalt*’) 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 behalf of his clients until 30 November 2021;
- b. shall strictly respect Article 339 of the Treaty on the Functioning of the European Union 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 advise or represent clients in areas in which he disposes of confidential or sensitive information or insights and for which these information and insights are essential to provide appropriate advice. This refers notably, but not exclusively, to specific files in which Former Commissioner Oettinger was personally involved through his portfolio responsibility or as Member of the College (e.g. contracts, policy files, grants, cases, claims, investigations, legislative procedures or negotiations) which are ongoing or, if those are already closed, which are directly connected to them.
- f. shall not advise or represent clients in matters which serve 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 his clients, contact the services previously under his portfolio responsibilities, including those held in a previous mandate, 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 advise or represent clients in relation to areas for which he was responsible, or 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 July and December 2021, about his activities as lawyer (*‘Rechtsanwalt’*) in as much as he can share information in accordance with his obligations under the German Federal Lawyers’ Act. The Commission should treat this information as confidential, in case Mr Oettinger asks for such confidentiality;
- j. shall continue to respect the duty to behave with integrity and discretion as regards the acceptance of certain mandates or clients after 30 November 2021, given that the obligations deriving from Article 245 of the Treaty on the Functioning of the European Union are not limited in time;

- k. shall inform the President of the Commission, according to Article 13(2) of the Code of Conduct for the Members of the Commission, in case of doubt about the compliance of a mandate or the nature of a specific client with the conditions and restrictions stipulated in the present decision and, more generally, in case of doubt with regard to the application of the Code of Conduct for the Members of the Commission.

Done at Brussels, on 24 March 2021.

The President
Ursula von der Leyen