

Opinion
of the
Independent Ethical Committee
established
by the European Commission
17 September 2020

Subject: Request for an opinion on Former Commissioner Vytenis Andriukaitis envisaged post term of office activity with regard to the “European Institute of Health and Sustainable Development” (EIHSD)

On request of the President of the European Commission, the Independent Ethical Committee, composed of Mr Allan Rosas and Mr Heinz Zourek, delivers the present opinion:

Procedure

1. On 23 July 2020, the Secretary-General of the Commission asked the Committee, on behalf of the President of the Commission, to deliver an opinion on the compatibility of former Commissioner Vytenis Andriukaitis’s envisaged post-term of office activity as founder of the “European Institute of Health and Sustainable Development” (EIHSD) with Article 245 of the Treaty on the Functioning of the European Union.
2. On 24 July 2020, Ms Dagmar Roth-Behrendt, member of the Independent Ethical Committee, informed the Secretary-General of the Commission and the members of the Committee about her decision to recuse herself from the file. She referred to the fact that, from 2014 to 2019, she had accepted to be an unpaid Special Adviser to Commissioner Andriukaitis and had worked very closely with him and his Cabinet. This would make it difficult to be impartial in the present case and would in any case create a risk of perception for the Committee’s impartial and independent work. Ms Roth-Behrendt consequently participated neither in the deliberations on this file nor in the adoption of the present opinion.

Facts

The European Institute of Health and Sustainable Development (EIHSD)

3. EIHSD is a not-for-profit organisation co-founded in 2020 by former Commissioner Andriukaitis, together with two partners - whose names and CVs have been made available to the Committee by Mr Andriukaitis - and a private company called “Sveikatos Ekonomiko Centras” (translated ‘Health Economics Centre’) which is specialised in research and consultancy as well as vocational training on national and international level.
4. EIHSD is a legal entity of limited civil responsibility, registered in Vilnius, Lithuania. According to information provided by former Commissioner Andriukaitis, the organisation will operate as a think-tank, but is not yet functional and has not yet started its activities due to administrative issues.
5. The goals and objectives of the organisation, as enshrined in the statutes of EIHSD, are listed as follows: (1) preservation of cultural heritage, (2) minorities’ rights protection and integration, (3) development of the national, civil and cultural identity, (4) national security and defence, (5) non-formal education, (6) support for non-governmental organisations, (7) integration of socially vulnerable groups, (8) civic education, (9) professional development, (10) organisation and stimulation of voluntary work, (11) social protection, (12) social support, (13) prevention of natural disasters, (14) international cooperation, (15) protection of consumers’ rights, (16) development of local communities, (17) protection of human and civil rights.
6. In order to achieve these objectives, EIHSD will operate in the areas of “research and application of social science and humanities.”
7. According to information provided by former Commissioner Andriukaitis, non-commercial institutions in the health, environment and social sectors as well as public authorities on national, regional and local levels are the target groups of the future operations of EIHSD. Advice or other services to commercial entities are foreseen among the activities included in the founding act establishing EIHSD and would not be provided.

The organisation of the European Institute of Health and Sustainable Development

8. According to the statutes of the foundation, EIHSD is composed of two main governance bodies: the General Assembly of Partners and the Head of the Organisation. The Head of the Organisation of EIHSD is responsible for the day-to-day management, “calling the General Assembly of Partners” and informing the partners about potential new partnerships. The Head is also in charge of “taking decisions on the establishment of branches and representation offices”. The General Assembly of Partners is the ‘supreme managing body’ and notably in charge of appointing and dismissing the Head of the Organisation. According to information provided by Mr. Andriukaitis, its competence is “the same as stipulated by the law on non-profit organisations” in Lithuania. When voting at the General Assembly, each partner has one voting right.

Former Commissioner Andriukaitis's position

9. Former Commissioner Andriukaitis is currently a partner of the organisation. He clarified that he would notify the Commission with a minimum of two months before starting to perform any activities for EIHSD if he received a proposal from EIHSD to perform certain contractual activities.

Funding of the European Institute of Health and Sustainable Development

10. According to the statutes, the European Institute of Health and Sustainable Development is financed by the partners. The statutes refer to investments of an equal amount of money by the partners, consisting in “material and non-material contributions”.
11. Former Commissioner Andriukaitis informed the Committee that, according to the law and founding documents, EIHSD can receive fees for services and contract work; special purpose allocations from state and municipal budgets; allocations from the Lithuania Fund and foreign funds; funds from charity, sponsorship, gifts, and inheritance; or other legally acquired funds. He added that, during his cooling off period, EIHSD would restrict itself from bidding for EU-funded projects.

Links of the European Institute of Health and Sustainable Development with the European Commission

12. Neither EIHSD nor “Health Economics Centre” are registered in the Joint Transparency Register of the European Parliament and the Commission. Moreover, according to information available on the Commission Financial Transparency System, there do not seem to be any direct links to the European budget. Former Commissioner Andriukaitis added that interest representation towards EU institutions was not foreseen by the founding documents.

Legal context

13. Article 245 of the Treaty on the Functioning of the European Union (TFEU) provides:

The Members of the Commission shall refrain from any action incompatible with their duties. Member States shall respect their independence and shall not seek to influence them in the performance of their tasks.

The Members of the Commission may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they 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. In the event of any

breach of these obligations, the Court of Justice may, on application by the Council acting by a simple majority or the Commission, rule that the Member concerned be, according to the circumstances, either compulsorily retired in accordance with Article 247 or deprived of his right to a pension or other benefits in its stead.

14. Article 339 of the Treaty on the Functioning of the European Union (TFEU) provides:

The members of the institutions of the Union, the members of committees, and the officials and other servants of the Union shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

15. Article 15(1) and (2) of the Charter of Fundamental Rights of the European Union provides:

- 1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.*
- 2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.*

16. Article 2(7) of the Code of Conduct for the Members of the European Commission (hereafter the ‘Code of Conduct’) provides:

7. Former Members shall respect the obligations arising from their duties that continue to have an effect after their term, in particular the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits in line with Article 245 of the Treaty on the Functioning of the European Union, and the obligations specified in this Code of Conduct.

17. Article 5 of the Code of Conduct provides:

- 1. Members shall comply with the duty of loyalty towards the Commission and discretion in discharging their duties. They shall act and express themselves with the restraint that their office requires.*
- 2. Members shall refrain from disclosing what is said at meetings of the Commission.*
- 3. Without prejudice to the disciplinary provisions applicable to officials and other agents, Members are responsible for the proper handling and any external transmission by members of their Cabinets of classified documents, of sensitive information or of confidential documents submitted to the College for adoption or information.*
- 4. Members shall not make any comment that would call into question a decision taken by the Commission or which may harm the Commission's reputation.*

18. Article 11 of the Code of Conduct provides:

1. After ceasing to hold office, former Members shall continue to be bound by their duty of integrity and discretion pursuant to Article 245 of the Treaty on the Functioning of the European Union. They shall continue to be bound by the duties of collegiality and discretion, as laid down in Article 5, with respect to the Commission's decisions and activities during their term of office.

2. Former Members shall inform the Commission with a minimum of two months' notice of their intention to engage in a professional activity during a period of two years after they have ceased to hold office. For the purposes of the present Code, 'professional activity' means any professional activity, whether gainful or not, other than any unpaid activity which has no link with the activities of the European Union and which does not give rise to lobbying or advocacy vis-à-vis the Commission and its services such as:

- (a) charitable or humanitarian activities;
- (b) activities deriving from political, trade unionist and/or philosophical or religious convictions;
- (c) cultural activities;
- (d) the mere management of assets or holdings or personal or family fortune, in a private capacity;
- (e) or comparable activities.

3. 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, and if the planned activity is related to the portfolio of the former Member, it shall decide only after having consulted the Independent Ethical Committee.

Without prejudice to the possibility for the President to seek its opinion in cases of doubt, the Independent Ethical Committee does not need to be consulted where former Members intend to:

- (a) continue to serve the European interest in an Institution or Body of the European Union;
- (b) take up functions in the national civil service of a Member State (at national, regional or local level)
- (c) engage with international organisations or other international bodies dealing with public interests and in which either the EU or one or several of its Member States are represented;
- (d) engage in academic activities;
- (e) engage in one-off activities for a short duration (1 or 2 working days);
- (f) accept honorary appointments.

4. Former Members shall not lobby Members or their staff on behalf of their own business, that of their employer or client, on matters for which they were

responsible within their portfolio for a period of two years after ceasing to hold office.

5. In the case of a former President, the periods set out in paragraphs (2) and (4) shall be three years.

6. The duties set out in paragraphs (2) and (4) shall not apply where the former Member is engaging in public office.

7. Decisions taken under paragraph (3) determining compatibility with Article 245 of the Treaty on the Functioning of the European Union and related opinions of the Independent Ethical Committee shall be made public with due consideration to the protection of personal data.

Opinion

19. The Committee notes that Members of the Commission have a right to engage in work and to pursue a freely chosen or accepted occupation after the term of their office. This right needs to be balanced with the obligations set out in Article 245 TFEU and the Code of Conduct, which develops these obligations in more detail.
20. Former Commissioner Andriukaitis informed the Commission about the establishment of a think-tank, which he co-founded together with three partners. Mr Andriukaitis informed the Commission that, as a partner of EIHSD, his position would entail participating in the General Assembly of Partners and ensuring the development of the new organisation.
21. Based on the available information, the Committee notes that the goals and objectives of the organisation, as enshrined in the statutes of EIHSD and listed in point 5 of the present opinion, do not represent a risk with regard to the interests of the Commission and the European Union. Consequently, the Committee does not see any particular risk of incompatibility with Article 245 TFEU as long as former Commissioner Andriukaitis respects the general obligations that apply to former Members of the Commission.
22. In this regard, the Commission decision should explicitly recall that, according to Article 339 TFEU, Members of the Commission are required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components. Should any activity of EIHSD be related to such protected information and the Commissioner be involved in this activity, he should recuse himself from this decision.
23. The Committee notes that former Commissioner Andriukaitis has explicitly confirmed that EIHSD will restrict itself from bidding for EU-funded projects during his cooling off period and that “interest representation is not foreseen by founding documents”. The Committee recommends that the Commission decision should reflect this commitment and recall the general prohibition resulting from Article

11(4) of the Code of Conduct to lobby Members of the Commission or their staff on behalf of EIHSD on matters for which former Commissioner Andriukaitis was responsible, for a period of two years after ceasing to hold office. This also applies in relation to any possible activity of EIHSD with regard to obtaining EU funding. This prohibition to lobby does not affect participation in public events or general exchanges of, and on, publicly available information with Members of the Commission or Commission staff.

24. Moreover, the Commission decision should recall the importance of complying with the duties of collegiality and discretion, as laid down in Article 11(1) and Article 5 of the Code, with respect to the Commission's decisions and activities during former Commissioner Andriukaitis's terms of office. This includes not only refraining from disclosing what was said at meetings of the Commission, but also a general duty to apply a high sense of discretion with regard to the use of information and insights that former Commissioner Andriukaitis obtained during his mandate, be it within his portfolio responsibilities or within the College.
25. In the light of the foregoing, the Committee notes that former Commissioner Andriukaitis declared that he currently had no professional activities in this new entity and that he committed to notifying the Commission in case he would receive a proposal from EIHSD to perform contractual tasks.
26. In this regard, the Commission should include a reminder in its decision that in accordance with Article 11(2) of the Code of Conduct, the obligation to notify professional post-mandate activities refers to any professional activity, whether gainful or not.
27. Based on the information currently available and the considerations set out above, the Committee concludes that the envisaged activity would be compatible with Article 245 TFEU on the condition that the above-mentioned obligations and commitments are set out in the Commission's decision.

Allan Rosas

Heinz Zourek