

Opinion
of the
Independent Ethical Committee
established
by the European Commission
4 May 2021

Subject: Request for an opinion on former Commissioner Hogan's post-term of office activities as regards his consultancy firm 'Hogan, Strategic Advisory Services'

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

Procedure

1. On 17 March 2021, 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 Phil Hogan's post-term of office activity as regards his consultancy company 'Hogan, Strategic Advisory Services', in order to ensure compliance with Article 245 of the Treaty on the Functioning of the European Union.

Facts

General information

2. On 1 February 2020, former Commissioner Hogan informed the Commission that he intended to establish an independent consulting company 'Hogan, Strategic Advisory Services' hereinafter referred to as 'Strategic Advisory Services'.
3. According to information that Commissioner Hogan provided, 'Strategic Advisory Services' will be an Irish consultancy company whose main activities would be 'to offer high-level external advice on a routine basis to management', 'to support management regarding strategic issues', 'to advise the company on stakeholder engagement' and 'to offer advice regarding the implementation of programmes and campaigns in Europe.'

Former Commissioner Hogan's position

4. Former Commissioner Hogan is the founder of 'Strategic Advisory Services'. In his notification to the European Commission, he has specified that he 'will be mindful of the compliance requirements of the Code of Conduct for Commissioners under article 245 of TFEU and the need to respect confidentiality on all matters relating to (his) mandates' as required in Article 339 of the TFEU. He has undertaken to 'not engage with any activities on behalf of the company that involves agriculture or any matter relating to (his) 9 months term of office as Commissioner for Trade.'

Legal context

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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

- 11. 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.
- 12. The balance must be proportionate. It can be achieved by imposing restrictions and conditions on a new professional activity where those restrictions and conditions are more proportionate than a simple prohibition or authorisation.

13. The Code of Conduct provides the framework in which the Commission has to establish this balance between the rights and obligations of its Members with regard to concrete, new activities. This balance cannot be established based on an automatic scheme and requires a case-by-case approach, which takes into account the context and particularities of each individual case.
14. As such, the Committee recommended in previous opinions¹, that the Commission should examine in all cases related to the provision of general consultancy services by a former Member of the Commission whether such restrictions and conditions should be imposed.
15. In the present case, the Commission seeks an opinion on the restrictions and conditions which should apply to the activities notified by former Commissioner Hogan as regards his consultancy firm ‘Strategic Advisory Services’.

The envisaged activities of former Commissioner Hogan

16. Former Commissioner Hogan notified the Commission that he intended to set up his consultancy company ‘Strategic Advisory Services’ in 2021. His role and responsibilities, as well as the scope of activities of his company remain, however, very broad and unspecified. According to the information he provided, these services could range from ‘high-level external advice to support management regarding strategic issues’ and activities to ‘advise the company on stakeholder engagement’ to providing guidance ‘regarding the implementation of programmes and campaigns’. The scope of activities of the company does not seem to target specific clients, economic sectors or policy areas.
17. With regard to this activity, the Committee notes in line with Commission decision C(2020)9037² addressing restrictions and conditions to apply to consultancy services by former Commissioners and its related opinion of 19 June 2020, that the potential wide range of activities leaves room for the former Commissioner to focus on activities, which would be compatible with Article 245 TFEU.

¹ [Opinion](#) of the Independent Ethical Committee established by the European Commission on former Commissioner Günter 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, 19 June 2020.

[Opinion](#) of the Independent Ethical Committee established by the European Commission on former Commissioner Violeta Bulc’s envisaged post-term of office activities as regards her consultancy firm ‘Vibacom’ and her activities for the ‘Fédération Internationale de l’Automobile’ and the company ‘BTC’, 26 October 2020.

² https://ec.europa.eu/info/files/commission-decision-c-2020-9037_en.

Restrictions in relation to consultancy services by ‘Strategic Advisory Services’

Restrictions on ‘lobbying’ or interest representation

18. According to Article 11(4) of the Code of Conduct, ‘former Members shall not lobby Members of 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’.
19. According to the Code, the term ‘lobbying’ refers to activities, which fall under the scope of the Agreement between the European Parliament and the European Commission of 16 April 2014 on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation. This would also cover any potential activity with a view 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.
20. As such, former Commissioner Hogan must not perform such lobbying activities towards the Commission, i.e. the Members of the current Commission and the staff of the Commission for a duration of two years after the end of his term of office, i.e. until 26 August 2022.
21. The Committee notes that Article 11(4) of the Code restricts this automatic prohibition on lobbying to matters for which former Commissioner Hogan was responsible within his portfolio. This limited prohibition of lobbying is appropriate in case former Members perform a professional activity, which requires, from time to time, representing the interests of the new employer towards the Commission.
22. The situation is, however, different if former Commissioners engage in general consultancy activities, which can also be performed without offering and performing ‘lobbying’ and consultancy services towards the Commission. In this case, they would make use of their previous influential position in the Commission, with which they were entrusted in order to pursue the general interest of the Union, to attract clients, and would capitalise on the experience, insights and relationships that they built within the Commission to exert influence for the benefit of specific individual interests. Given that Members of the Commission are well-known personalities and public persons associated with a wide range of EU policies and issues, the Committee considers in line with previous opinions that offering, and performing, lobbying service towards the Commission via a consultancy would not be compatible with the principle of integrity established by Article 245 TFEU and the need to preserve public trust in the Commission.
23. The Committee considers therefore that former Commissioner Hogan should not offer lobbying services towards the Commission on any matter for a period of two years after ceasing to hold office.

Restrictions based on the obligations of confidentiality and discretion

24. The Commission decision should recall that, in his consultancy activity, former Commissioner Hogan must strictly respect Article 339 TFEU, which provides that *'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 costs components'*.
25. In addition, the decision should insist on the fact that, according to Article 11(1) of the Code in conjunction with Article 5(2), former Commissioner Hogan must not disclose what was said at meetings of the Commission.
26. The Committee also wishes to underline that former Commissioner Hogan must show a high sense of discretion with regard to the use of information and insights that he obtained in the performance of his duties as Commissioner for Agriculture and Rural Development or Trade, be it with regard to the functioning of the Commission or the Commission's relations with other institutions, Member States, third countries or third parties. He should not exploit any insights of a confidential or sensitive nature in policy, strategy or internal processes that he obtained during his term of office. If former Commissioner Hogan has any doubt in this regard, he must 'inform the President in a timely manner and before acting on the matter relating to which the doubts arise', according to Article 13(2) of the Code.
27. As set out in the above-mentioned Committee's opinions of 19 June 2020 and 26 October 2020 on consultancy activities, it is important that Mr Hogan does not accept mandates, which will necessarily lead to a conflict between the need to advise his client appropriately and his obligation not to use confidential information or other sensitive information and insights obtained during the performance of his duties. Therefore, former Commissioner Hogan should not accept mandates which refer to areas in which he disposes of such information or insights and for which this information and these insights would be essential to provide appropriate advice.

Restrictions based on the duties of collegiality and discretion

28. According to Article 11(1) of the Code, former Members continue to be bound by the duties of collegiality and discretion, as laid down in Article 5 of the Code, with respect to the Commission's decisions and activities during their term of office. As such, the Commission decision should recall that former Commissioner Hogan cannot advise a client in a way that serves to question or contest decisions and activities that the Commission adopted or performed while he was a Member of the Commission.

Restrictions based on the general duties of integrity and discretion

29. The Commission decision should recall that, based on Articles 2(6) and 11(1) of the Code, former Commissioner Hogan continues to be bound by his duty of integrity and discretion as regards the acceptance of certain appointments or benefits in line with Article 245 on the Treaty on the Functioning of the European Union.
30. Therefore, in line with the above-mentioned precedent opinions, the Committee considers that former Commissioner Hogan and his company should not, for clients of his company, contact the services previously under Mr Hogan's portfolio responsibilities. This affects namely the Directorate-General for Agriculture and Rural Development and the Directorate-General for Trade.
31. Moreover, the Committee considers that former Commissioner Hogan should not accept any consultancy mandate in any area of his previous responsibilities, or provide services to clients in relation to other policy areas, if these clients were major stakeholders in his former areas of portfolio. '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 reason for this restriction on mandates and clients is not only the above-mentioned risk of conflicting duties with regard to the protection of information and insights obtained during the term of office. It is also to avoid that, retroactively, doubts are cast on decisions and activities of the Commission in the previous areas of responsibility of the former Member.
32. Finally, as regards the timeframe for these restrictions on the acceptance of certain clients and contracts, the Commission should recall that they will apply for two years after the end of his term of office, in line with Article 11(2) and (4) of the Code. The Commission decision should also recall that the duties of integrity and discretion established in Article 245 TFEU are unlimited in time. This means that the acceptance of a mandate or a client can, in exceptional cases even after two years, constitute a breach of the duties of discretion and integrity. In case of doubt, Mr Hogan should inform the President in compliance with Article 13(2) of the Code.

Implementation of the restrictions

33. In order to ensure a credible implementation of the restrictions mentioned above, the Committee recommends in line with its previous opinions that the Commission should authorise the activity only on the condition that the former Member informs the Commission every 6 months, for a period of 2 years after the end of the term of office, through a list of clients and mandates that he accepted. 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 the former Member asks for such confidentiality.

34. Irrespective of this regular information obligation, in case of doubt about the compliance of a mandate or a client with the above-mentioned restrictions, former Commissioner Hogan should immediately inform the President of the Commission according to Article 13(2) of the Code of Conduct. This is particularly advisable if a possible client is registered in the Joint Transparency Register of the European Parliament and the European Commission or when it is evident that it should have been registered.

Registration of ‘Strategic Advisory Services’ in the Transparency Register

35. The Commission decision should ask former Commissioner Hogan to ensure that his company is registered in the Joint Transparency Register of the European Parliament and the European Commission if he were to engage in activities which are covered by the scope of the Register.

Conclusions

36. As regards his consultancy company in general, the Committee concludes that the Commission should impose the following restrictions and conditions on former Commissioner Hogan’s activity:

1) Former Commissioner Hogan should not lobby the Commission, its Members or staff, or any of its Executive Agencies on behalf of ‘Strategic Advisory Services’ or clients of ‘Strategic Advisory Services’ until 26 August 2022.

2) Former Commissioner Hogan should strictly respect Article 339 TFEU, which provides that ‘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.’

3) Former Commissioner Hogan should not disclose what was said at meetings of the Commission.

4) Former Commissioner Hogan should not exploit any insights of a confidential or sensitive nature in policy, strategy or internal processes that he obtained during his term of office.

5) Former Commissioner Hogan should not accept mandates which concern areas in which he disposes of confidential or sensitive information or insights and for which this information and insights are essential to provide appropriate advice. This refers notably, but not exclusively to advice or work on specific files in which former Commissioner Hogan 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.

- 6) Former Commissioner Hogan should 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.
- 7) Former Commissioner Hogan and his company should not contact the services previously under Mr Hogan's portfolio responsibilities on behalf of clients of his company until 26 August 2022.
- 8) Former Commissioner Hogan should not accept mandates 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. This restriction should apply until 26 August 2022.
- 9) Former Commissioner Hogan should inform the Commission every 6 months, until 26 August 2022, about his clients and mandates. The Commission should treat this information as confidential, in case the former Commissioner asks for such confidentiality.
- 10) In case of doubt about the compliance of a mandate or client with these restrictions, former Commissioner Hogan should inform the President of the Commission according to Article 13(2) of the Code of Conduct, especially if a possible client is registered in the Joint Transparency Register of the European Parliament and the European Commission or when it is evident that it should have been registered.
- 11) Given that the obligations of Article 245 TFEU are not limited in time, former Commissioner Hogan should continue to respect the general duty to behave with integrity and discretion as regards the acceptance of certain mandates or clients after 26 August 2022, too.
- 12) Finally, former Commissioner Hogan should register his company 'Strategic Advisory Services' in the Joint Transparency Register of the European Parliament and the European Commission before he engages in consulting activities covered by the Register.

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