

Opinion
of the
Independent Ethical Committee
established
by the European Commission
29 June 2020

Subject: Request for an opinion on former Commissioner Günther Oettinger's envisaged post term of office activity as member of the Supervisory Board of Amundi Deutschland GmbH, München

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 14 May 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 Oettinger's envisaged activity as member of the Supervisory Board of Amundi Deutschland GmbH with Article 245 of the Treaty on the Functioning of the European Union.

Facts

The company

2. Amundi Deutschland GmbH is a limited liability company under German law. Its seat is in Munich. According to its articles of association, Amundi Deutschland GmbH is an investment management company within the meaning of the German Capital Investment Code (KAGB). The purpose of the company is the management of domestic investment assets (collective asset management). According to the company's own publications, it has 120 employees and manages €45 billion in Germany. Its clients are institutional, corporate and individual investors. The asset management activities cover all regions, markets and themes.

3. According to the German Federal Limited Liability Companies Act and the articles of association of the company, the governing bodies of Amundi Deutschland GmbH are the assembly of shareholders, the directors and the Supervisory Board. A Supervisory Board is not mandatory under the Limited Liability Companies Act, but can be established by the articles of association like in the present case.
4. Amundi Deutschland GmbH is part of Amundi Asset Management, a French “société par actions simplifiée”, registered in Paris and approved as a portfolio management company. The Crédit Agricole Group is the majority shareholder of Amundi Asset Management. Amundi’s governance structure is composed of a Board of Directors, a General Management Committee, an Executive Committee and a Global Advisory Board. According to company information, Amundi Asset Management SAS has 4,500 employees in approximately 40 countries and €1,600 billion of assets under management for 1,500 institutional clients and more than 100 million retail clients. Amundi was founded in 2010 as a result of the merger between the asset management activities of Crédit Agricole and Société Générale.

Former Commissioner Oettinger’s position

5. Former Commissioner Oettinger has informed the Commission that he envisages accepting a position as member of the Supervisory Board of Amundi Deutschland GmbH. The Supervisory Board of Amundi Deutschland GmbH has three members and must meet at least four times a year. Its duties are established by the articles of association of the company and the above-mentioned German Federal Limited Liability Companies Act. According to the articles of association, its role is to supervise and advise the management, and to ensure that the interests of shareholders are safeguarded. If a Supervisory Board is established, like in the present case, Section 111 of the German Stock Corporation Act on the tasks and rights of the Supervisory Board applies, unless otherwise provided in the articles of association. This is not the case according to the information available to the Committee. Section 111 provides notably that the Supervisory Board may inspect and audit the books and records of the company as well as its assets, particularly the company’s cash and the inventory of securities and goods. It also provides that the measures to be taken by the management may not be transferred to the Supervisory Board.

Links of Amundi with the Commission

6. Amundi Asset Management is registered in the Joint Transparency Register of the European Parliament and the Commission. Former Commissioner Oettinger did not have any meetings with Amundi according to the reported information. The Committee is not aware of any financial commitments of the Commission towards Amundi based on the information published in the Commission’s Financial Transparency System.

Legal context

7. 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.

8. Article 339 of the 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.

9. 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.

10. Article 2(7) of the Code of Conduct for the Members of the European Commission (hereafter the 'Code of Conduct') provides:

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.

11. 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.*

12. 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

13. 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 for the Members of the European Commission, which develops these obligations in more detail.
14. In the present case, in his role as member of the Supervisory Board, former Commissioner Oettinger's task would be to supervise and advise the directors of Amundi Deutschland GmbH, who are responsible for the management of the company and the daily business decisions. The responsibilities of the Supervisory Board are established by the above-mentioned Limited Liability Company Act and the articles of association of the company. The tasks of former Commissioner Oettinger as member of the Supervisory Board are, as such, not directly related to his former portfolios and will normally not require any interaction with the Commission.
15. There is, however, a risk that specific information or insights that former Commissioner Oettinger obtained during his two terms of office are relevant for business decisions of the company on which the Supervisory Board would have to take a position or provide advice. This can concern information obtained in areas falling within his previous portfolios in the Commission or in other areas in which he was involved via his collegial responsibilities in the Commission.
16. The Committee considers it important that both former Commissioner Oettinger and Amundi Deutschland GmbH are fully aware of the obligations of former Members of the Commission, which continue to apply after the term of office.
17. The Committee deems it essential that the Commission decision stresses explicitly the importance of strictly respecting the obligations resulting from Article 339 TFEU, namely 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.
18. The decision should equally insist explicitly on the importance of complying strictly 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 Oettinger'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 Oettinger obtained during his mandate, be it within his portfolio responsibilities or within the College.
19. The Committee recommends therefore that the Commission decision should include a condition that Commissioner Oettinger shares a copy of the Commission Decision with Amundi Deutschland GmbH and confirms this to the Commission. This would ensure full transparency of the applicable obligations, conditions and restrictions towards the company and provide the Commission with an additional assurance that

situations which could create a risk for the respect of those obligations will be avoided or addressed by both the Former Commissioner and the company.

20. The decision should furthermore recall that, in case former Members have a doubt with regard to their obligations, they must inform the President of the Commission in a timely manner and before acting on the matter relating to which the doubts arise, according to Article 13(2) of the Code.
21. Finally, the decision should recall explicitly the provisions of Article 11(4) of the Code of Conduct which provides that former Members shall not lobby the Commission on behalf of their own business, that of their employer or client, on matters for which they were responsible within their portfolio, including the portfolio in a previous term of office, for a period of two years after ceasing to hold office. The decision should extend this, in the present case, to all matters in which former Commissioner Oettinger was involved at College level, even if he was not directly responsible for them through his portfolio responsibilities.
22. Under these conditions, the Committee considers that the envisaged activity can be authorised.
23. Therefore, based on the above-mentioned considerations, the Committee concludes that the envisaged activity would be compatible with Article 245 TFEU on the condition that the above-mentioned obligations, conditions and restrictions are explicitly and in full set out in the decision and brought to the attention of former Commissioner Oettinger and Amundi Deutschland GmbH.

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