

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

Subject: Request for an opinion on Former Commissioner Sir Julian King’s envisaged post term of office activity as Senior Adviser at ‘Flint Global’

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 30 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 King’s envisaged post-term of office activity as Senior Adviser at ‘Flint Global’ with Article 245 of the Treaty on the Functioning of the European Union (TFEU).

Facts

‘Flint Global’

2. According to the information made publicly available by the company, ‘Flint Global’ is a business advisory company that ‘support[s] companies who face the challenges of regulatory and policy change at national, European and international levels’. Whilst its headquarters are located in London, ‘Flint Global’ also has offices in Brussels (‘Flint Europe’) as well as in six other European capitals.
3. According to this information, ‘Flint Global’ ’s sectors of activity encompass digital policy, technology, telecommunications, media, financial services, life sciences, manufacturing, retail, transport and energy. Its three main fields of expertise are :
 - Markets and Investor Advisory’: under this heading, the company advises investors on political and regulatory risks. Its clients in this area are investment

banks, institutional investors, sovereign wealth funds, private equity and alternative asset managers;

- ‘Policy and Political Analysis’: the company’s activity under this heading consists of advising clients on how they can shape the business environment, identify risks and opportunities and work with policymakers to achieve their goals;
- ‘Competition and Regulation’: this activity consists of providing ‘strategic advice and detailed technical expertise on mergers and acquisitions and on regulation and other competition matters’.

‘Flint Europe’

4. ‘Flint Europe’ is the European branch of ‘Flint Global’. According to its website, ‘Flint Europe’ ‘provides advice to’ and helps clients ‘managing risk and creating opportunity’. More specifically, ‘Flint Europe’’s stated activities include :
 - ‘identifying business-critical issues at EU level and help clients to understand and develop strategy in relation to them’;
 - ‘provide insight and foresight on EU regulation and legislation so that [their] clients can stay ahead of business-critical developments’ as well as ‘advise on the political approaches of individual Member States on key issues in EU policy’;
 - preparing evidence-based narratives, strategies and strategic communication plans ‘tied to commercial objectives and reflect a deep understanding of political reality’;
 - offering organisation advice to ‘optimise [their] clients’ representation and policy engagement in Europe, including help to recruit the best people for senior corporate EU positions’.

The organisational structure of ‘Flint Global’

5. The website of ‘Flint Global’ lists the following organisational structure:
 - Managing partners;
 - Partners;
 - Chairman;
 - Managers;
 - Senior Advisers;
 - Consultants.

Former Commissioner King’s position at ‘Flint Global’

6. Former Commissioner King intends to accept a position as Senior Adviser at ‘Flint Global’. The activity would be remunerated with a fixed salary and would be carried out on a part-time basis (three days a week), for a period of two years.

7. According to the information provided in the notification, former Commissioner King would be based in London and would ‘assist Flint in advising on local and international economic policy and regulatory developments as they affect Flint’s clients.’ The former Commissioner underlined in his notification that his work ‘would not be related to his [former] portfolio and he would not be in contact with the European Commission in this role’. He confirmed this information by emphasising that he would be ‘based in London (not in Brussels), with no contact with the Commission, and not working on any of the subjects [he] covered in the Commission’.
8. According to the offer from ‘Flint Global’ that the former Commissioner included in his notification, the former Commissioner’s main task would be to ‘provide advice to clients on strategic policy issues, with a focus on the technology sector’. In its offer, ‘Flint Global’ underlines that ‘it is essential for both Flint and [former Commissioner King] to respect fully the rules on the conduct of former Commissioners.’ It states that, in line with these rules, former Commissioner King would work in Flint’s London office and be on a UK contract. The company also specifies that it would not expect former Commissioner King to have contact with the Commission concerning Flint’s business. It ‘would also not ask [former Commissioner King] to work on matters that fell within [his] former Commissioner portfolio, specifically issues concerning the fight against cybercrime, EU funded security research, or security of critical EU infrastructure.’ Nor would the company ask former Commissioner King to advise clients in relation to issues they raised in discussion with him during his time as Commissioner. As regards the former Commissioner’s responsibilities at Flint, the company specifies that it would expect former Commissioner King, through its London office, to ‘assist it in advising on local and international economic policy and regulatory developments as they affect our clients.’ The former Commissioner ‘would be working with the teams advising existing clients on their business, as well as helping them develop new business.’

Links of ‘Flint Global’ with the European Commission

9. The Financial Transparency System of the European Commission does not contain any records of funding received by ‘Flint’ from the EU Budget. According to the company’s website, ‘[m]embers of [Flint’s] multi-national team have experience of working at the most senior levels in European governments, the EU Commission, regulatory agencies, competition bodies and the private sector’.
10. ‘Flint Europe’ is registered in the Joint Transparency Register of the European Parliament and the Commission as a consultancy company. According to the Transparency Register, ‘Flint Europe’ met 11 times with representatives and/or Members of the European Commission. There is no record in the Register of any meeting held with Commissioner King or a member of his Cabinet.

Legal context

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.*

16. 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

17. The Committee recalls 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.
18. Former Commissioner King intends to accept a position of Senior Adviser at the advisory company 'Flint Global'. In that capacity, he would 'assist Flint in advising on local and international economic policy and regulatory developments as they affect Flint's clients.' Former Commissioner King's main task would be, to 'provide advice to clients on strategic policy issues, with a focus on the technology sector'.
19. As stated explicitly in former Commissioner King's notification and in the offer from Flint Global, his work would not be related to his former portfolio and he would not be in contact with the European Commission in this role. Former Commissioner King

reiterated this commitment and confirmed that he would be ‘based in London (not in Brussels), with no contact with the Commission, and not working on any of the subjects (he) covered in the Commission.’ The company furthermore stated explicitly that it would not expect former Commissioner King to have contact with the Commission concerning Flint’s business. It would also not ask former Commissioner King to work on matters that fell within his former Commissioner’s portfolio, specifically issues concerning the fight against cybercrime, EU funded security research, or security of critical EU infrastructure. Nor would the company ask former Commissioner King to advise clients in relation to issues that they raised in discussion with him during his time as Commissioner.

20. Based on this information, the Committee does not see an incompatibility with Article 245 TFEU as long as former Commissioner King respects these commitments and the general obligations applying to former Members of the Commission.
21. However, such advisory functions constitute by their very nature a potential risk that specific information or insights that former Commissioner King obtained during his mandate could be relevant for business decisions of his future employer and its clients. This can concern information obtained in areas of his portfolio, but also areas in which he was involved through his collegial responsibilities.
22. Therefore, the Committee considers it crucial that former Commissioner King is fully aware of his obligations as former Member of the Commission, which continue to apply after his term of office and recommends emphasising the need to have a prudent approach when providing advice to the company and its clients.
23. In this regard, the Commission decision should 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.
24. Moreover, the Commission decision should underline 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 King’s term 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 King obtained during his mandate, be it within his portfolio responsibilities or within the College.
25. The decision should also emphasise the importance of the former Commissioner’s commitment not to have any contact with the Commission and not to work on any of the subjects that he covered in the Commission.
26. In addition, the decision should recall the general prohibition resulting from Article 11(4) of the Code of Conduct to lobby Members of the Commission or Commission staff on behalf of ‘Flint Global’, ‘Flint Europe’ or their respective clients on matters for which he was responsible, for a period of two years after ceasing to hold office

applies. It should clarify that the term ‘lobbying’ includes indirect lobbying in the sense of influencing the Commission ‘through the use of intermediate vectors such as media, public opinion, conferences or social events, targeting the EU institutions’ as set out in paragraph 7 of the Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation and applies independently of the location of the employment. This would also cover any potential activity with a view to obtaining EU funding. The 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.

27. Finally, the decision should 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.
28. Therefore, based on the above-mentioned information and considerations, the Committee considers that the envisaged activity would be compatible with Article 245 TFEU, subject to the respect of the above-mentioned commitments and the conditions specified in this opinion.

Dagmar Roth-Behrendt

Allan Rosas

Heinz Zourek