

Opinion
of the
Independent Ethical Committee
established
by the European Commission
13 July 2020

Subject: Request for an opinion on Former Commissioner Karmenu Vella’s envisaged post term of office activity as Co-Chair of the “Network of Business Leaders to drive the Sustainability Agenda” at Weave Consulting

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 June 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 Vella’s envisaged post-term of office activity as Co-Chair of the “Network of Business Leaders to drive the Sustainability Agenda” at “Weave Consulting” with Article 245 of the Treaty on the Functioning of the European Union (TFEU).

Facts

Weave Consulting

2. According to the information made publicly available by the company, Weave Consulting is a consultancy firm established in Malta in 2007. Originally, it focused on the topics of equality and diversity and provided consultancy services related to these fields. It evolved over the years “to offer Corporate Social Responsibility (CSR) services, particularly CSR audits” and has “recently been re-launched following a rebranding exercise and the development of a new business proposition to its clients - CSR auditing and consultancy”. According to public information, it has the status of a Private Limited Company under Maltese law.

3. According to their website, Weave Consulting conducts Corporate Social Responsibility audits to “help business leaders identify how and where to implement CSR initiatives”. Consequently, Weave Consulting’s declared goal is twofold. First, the company aims to “help business leaders transform their companies in order to operate in a more sustainable and ethical manner, while increasing profitability and leaving a positive impact on the community”. Second, Weave Consulting aims to help businesses “incorporate social and environmental considerations in decision-making and be accountable for their impacts”.
4. Weave Consulting refers to the Sustainable Development Goals of the United Nations as inspiration for its work. The Sustainable Development Goals cover a wide range of social and economic development issues, including poverty, health, education, climate change, gender equality, energy, environment and social justice. Weave Consulting also refers to the UN Business and Human Rights Framework, which is a global standard for preventing and addressing the risk of human rights impacts linked to business activity.
5. More specifically, Weave Consulting’s consultancy work is based on ISO 26.000:2010, an international standard “intended to assist organisations in contributing to sustainable development” and aims at “promoting social responsibility and encouraging businesses to go beyond legal compliance”. This ISO standard covers seven core subjects: (1) Organisational governance, (2) Human Rights, (3) Labour practices, (4) Environment, (5) Fair operation practices, (6) Consumer Issues, (7) Community involvement and development.
6. In addition to its focus on CSR auditing and consulting services, Weave Consulting also offers other services in the field of diversity management, gender mainstreaming, training, research and EU Funding.

The organisation of Weave Consulting and its planned “Network of Business Leaders”

7. Weave Consulting is run by a team of four persons that includes two researchers, one business development consultant and a managing consultant who is the director and owner of the company.
8. The firm recently created a new initiative called “Network of Business Leaders to drive the Sustainability Agenda”. The initiative has been taken in view of the United Nations Global Compact, which is a call by the UN to companies to align strategies and operations with universal principles on human rights, labour, environment and anti-corruption, and take actions that advance societal goals. The strategy of the UN Global Compact is to drive business awareness and action in support of achieving the Sustainable Development Goals by 2030. In addition to its global approach, the Global Compact relies on the Local Networks in individual countries. There is currently no such network in Malta according to the UN Global Compact’s website.
9. According to Former Commissioner Vella, Weave Consulting’s initiative is still in a development phase. He specified, however, that Weave Consulting had already “approached a number of leading businesses to sound out the idea” and that there was

“great interest”. Commissioner Vella added that Weave Consulting had also been in contact with the UN Global Compact.

10. According to the information provided by Former Commissioner Vella, Weave Consulting intends to set up a network of “forward-thinking business leaders” with the aim to “provide professional support to develop effective social responsibility and sustainable development solutions within their organisation, whilst contributing to the common good”, following the guidelines provided by ISO 26.000:2010 standard.
11. The aim of the “Network of Business Leaders” is threefold. First, to “build awareness amongst key players within the business community about the key role they can play in contributing towards the achievement of the sustainable development goals”. Second, to “engage these players to commit towards voluntary commitments” and third to “create a forum to exchange tools, resources, methodologies, ideas and good practices”.

Former Commissioner Vella’s position

12. Former Commissioner Vella intends to accept a position as Co-Chair of the “Network of Business Leaders to drive the Sustainability Agenda”.
13. According to the information provided by Weave Consulting to Mr Vella, the position does not offer any honoraria at this stage. However, in the future, members of the network might be invited to contribute an annual fee, which would enable Weave Consulting to fund a secretariat for the Network and pay honoraria.

Links of Weave Consulting with the European Commission

14. The Financial Transparency System of the European Commission does not show any financial commitments towards Weave Consulting.
15. Weave Consulting is not registered in the Joint Transparency Register of the European Parliament and the Commission.
16. From 2014 to 2017, Weave Consulting conducted a study under a framework contract with the European Institute for Gender Equality, entitled “Collection of information and provision of research related services”.

Legal context

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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

23. 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.
24. Former Commissioner Vella is willing to accept the position of Co-Chair of a “Network of Business Leader to drive the Sustainability Agenda” to be set up by Weave Consulting. This position would not be remunerated at the moment. Mr Vella’s role would be to promote corporate social responsibility and sustainable development principles within the business community in Malta and to participate in creating a forum to exchange tools, ideas and good practices. The tasks of Former Commissioner Vella as Co-Chair of the “Network of Business Leader” are, as such, not directly related to his former portfolio and do not seem to require normally any interaction with the Commission.
25. Based on the current information, the Committee does not see any particular risk of incompatibility with Article 245 TFEU as long as Former Commissioner Vella respects the general obligations, which apply to former Members of the Commission.
26. 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.
27. 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 Vella’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 Vella obtained during his mandate, be it within his portfolio responsibilities or within the College.

28. Furthermore, the Commission 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 the “Network of Business Leaders” and of Weave Consulting on matters for which he was responsible, for a period of two years after ceasing to hold office applies. This is particularly important in relation to any possible activity of Weave Consulting with regard to obtaining EU funding. The prohibition to lobby (i.e. the promotion of certain interests with the objective to influence the formulation or implementation of policy or legislation, or the decision-making process of the Commission directly or indirectly) does not affect participation in public events or general exchanges of, and on, publicly available information with Members of the Commission or Commission staff.
29. Finally, the Committee would like to underline the fact that the initiative to set up a “Network of Business Leaders” in Malta by Weave Consulting is only in its development phase. There is no proper activity yet and the initiative might evolve over time. Therefore, the Committee recommends that the Commission should ask Former Commissioner Vella to provide updated information on this envisaged activity in six months in order to evaluate the activity and its compatibility with Article 245 TFEU again, based on information that is more precise. This information should notably include details on the activity of the network and of the Co-Chairs, the name and nature of member / member organisations as well as any plans for the future.
30. On the basis of the information currently available, the Committee considers that the envisaged activity would be compatible with Article 245 TFEU, subject to a further evaluation to be carried out as foreseen in the preceding paragraph.

Dagmar Roth-Behrendt

Allan Rosas

Heinz Zourek