Opinion

of the

Independent Ethical Committee

established

by the European Commission

25 May 2020

Subject: Request for an opinion on an envisaged post term of office activity of former Commissioner for Health and Food Safety Vytenis Andriukaitis as member of the 'Movement Political Advisory Panel' of 'International Health Partnership for Universal Health Coverage 2030' (UHC2030)

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

- On 6 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 for Health and Food Safety Vytenis Andriukaitis' envisaged post-term of office activity as member of the 'Movement Political Advisory Panel' of 'International Health Partnership for Universal Health Coverage 2030' (UHC2030) with Article 245 of the Treaty on the Functioning of the European Union.
- 2. On 14 May 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 did consequently participate neither in the deliberation of this file nor in the adoption of the present opinion.

Facts

3. UHC2030 is a global a multi-stakeholder partnership which is supported by the World Health Organisation and the World Bank. Resolutions of the UN General Assembly

refer to its work, namely resolution 72/139 of 12 December 2017 on 'global health and foreign policy' and resolution 73/131 of 13 December 2018 on 'scope, modalities, format and organization of the high-level meeting on universal health coverage'.

- 4. According to UHC2030, the initiative aims to build stronger health systems in order to reach universal health coverage by 2030. The movement started in 2007 under the name 'International Health Partnership' (IHP+) and aimed to improve cooperation in health to meet the UN Millennium Development Goals. In 2016, IHP+ transformed into UHC2030 to respond to the 'health-related Sustainable Development Goals', and expanded its 'scope to include health systems strengthening to achieve universal health coverage'.
- 5. UHC2030's stated mission is to 'create a movement for accelerating equitable and sustainable progress towards universal health coverage'. UHC2030 is based on the principle that 'all individuals and communities should have access to quality essential health services without suffering financial hardship'.
- 6. In order to achieve its declared goals, UHC2030 reports to have six main activities: (1) the coordination of health system strengthening, (2) advocacy, (3) accountability checks, to ensure progressive realisation at country level, (4) knowledge exchange and learning, (5) promotion of civil society engagement and (6) of private sector engagement.

The organisation and partnerships of UHC 2030

- UHC 2030's members are currently 84 countries and territories, including the EU (through the European Commission, Directorate-General for International Cooperation and Development - DG DEVCO), 15 multilateral organisations and global health initiatives, 3 philanthropic foundations, 37 private sector organisations and companies and 40 civil society organisations, according to the Core Team Report in 2018.
- 8. UHC2030's governance is structured as follows:
 - *A Steering Committee*, responsible for overall strategic direction and oversight of UHC2030. It is composed of a broad representation from five constituencies: countries and territories (9 representatives), multilateral organisations (3 representatives), philanthropic foundations (1 representative), civil society organisations (3 representatives) and private sector entities (1 2 representatives) as well as a representative of the WHO and the World Bank (1 representative each).
 - *A reference group*, which has a technical and operational focus and serves as a forum for information exchange as well as identifying potential priority issues.
 - *The Core Team Operations*, serving as a secretariat, which is co-hosted by the World Health Organization and the World Bank, who each appoint one co-lead. The Core Team manages the daily operations of UHC2030 in line with the agreed

work plan and budget, under the oversight and guidance of the Steering Committee. It follows administrative and financial rules of both the WHO and the UN.

- A Communication Team.
- *Technical Working Groups*, which are multi-stakeholder groups established by the Steering Committee and bring together technical experts to discuss and identify working priorities.
- *The Civil Society Engagement Mechanism*, which is the civil society arm of the UHC2030 with its own internal governance structure. Its role is to bring attention to the needs of the most marginalised and vulnerable populations.
- *The Movement Political Advisory panel*, whose role is to advise and provide guidance to UHC2030. The Movement Political Advisor Panel aims at providing guidance to the Steering Committee to strengthen political support for universal health coverage. It also conveys UHC2030's message to high-level political leaders for ensuring their commitment translates into action. The Movement Political Advisory Panel is supported by the secretariat.
- 9. UHC2030 partners are organised into five constituencies, whose members endorsed the UHC2030 Global Compact. They are countries and territories, multilateral organisations, philanthropic foundations, civil society organisations and private sector entities. The World Economic Forum hosts the 'Private Sector Constituency' of UHC2030.

Former Commissioner Andriukaitis' position

- 10. Former Commissioner Andriukaitis has informed the Commission that he had been invited to join the Movement Political Advisor Panel of UHC2030 above mentioned. He has informed the Commission that in this capacity, he would be expected to advise, provide guidance and knowledge to the movement, and use his network to promote universal health coverage and mobilise political support. His role would have no legal status and would not include any binding obligations or decision-making role. He would be expected to participate in meetings in person once per year and engage quarterly in teleconferences.
- 11. Mr Andriukaitis would serve a one-year term and would be eligible for re-appointment for maximum two additional terms. He informed the Commission that this function would not include any remuneration apart from travel and accommodation costs associated with relevant UHC2030 events or UN official meetings on behalf of UHC2030.

Funding of UHC2030

12. According to publicly available information, UHC 2030 receives funds from its members and partners. The European Union (DG DEVCO), the WHO and the World Bank are the most significant contributors according to UHC2030's activity report.

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 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.

15. 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.

16. 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.

17. 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 (17) 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

- 18. 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.
- 19. UHC2030 is an international initiative dealing with public interests in which the EU and several of its Member States are represented. The objectives of UHC2030 are widely shared at global level, including by the European Union.
- 20. As a member of the Movement Political Advisory Panel of UHC2030, former Commissioner Andriukaitis would be attending, once per year in person and quarterly in teleconferences, meetings of the above-mentioned panel. This activity is unpaid, except for the compensation of travel expenses. According to the information provided by Mr Andriukaitis, this role would have no legal status or binding obligations and would not involve any decision-making power.
- 21. The general obligation of confidentiality set out in Article 339 of the Treaty on the Functioning of the European Union as well as the general duties of collegiality and discretion with respect to the Commission's decisions and activities during the term of office set out in Article 11(1) of the Code of Conduct in conjunction with Article 5, continue to apply.
- 22. Therefore, the Committee considers the envisaged activity as compatible with Article 245 of the Treaty on the Functioning of the European Union.

Allan Rosas

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