

**Opinion**  
of the  
**Independent Ethical Committee**  
established  
by the European Commission  
**21 April 2020**

**Subject: Request for an opinion on former Commissioner Vella’s envisaged post term of office activity as**

- **Member of the ‘Ocean Unite’ Network**
- **Member of the Advisory Council of ‘Sustainable Ocean Alliance’**
- **Member of the Advisory Board of the ‘Treelion Foundation’**

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 26 February 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 activities as Member of the Ocean Unite Network, Member of the Advisory Council of Sustainable Ocean Alliance and Member of the Advisory Board of the Treelion Foundation with Article 245 of the Treaty on the Functioning of the European Union.

**Facts**

- a) *Ocean Unite Network*
2. Ocean Unite is a Non-Governmental Organisation based in the United States, which was founded in 2015 in order to ‘unify and mobilise impactful voices’ to drive action in the field of ocean conservation. It is a tax-exempt non-profit corporation organised under the laws of the District of Columbia.
3. Ocean Unite wants to support key global events and advocate for building ocean protection and resilience. It defines itself as a ‘movement accelerator at the forefront of driving positive change for people and the planet’.

4. Priorities for Ocean Unite are the adoption of a new 2030 international biodiversity target of 30% high protection of oceans through an internationally recognised and binding target; the negotiation and adoption of a strong high seas UN agreement; the increase of high-level political engagement of the Commission for Conservation of Antarctic Marine Living Resources Members; and securing commitments from governments to increase transparency and funding for technology to track global fishing activities.

#### *The organisation of Ocean Unite*

5. The governance structure of Ocean Unite consists of a Board of Directors and a team managed by a Chief Executive Officer.
6. Ocean Unite works moreover with a network of widely known personalities to ‘amplify crucial Ocean messages to decision-makers in support of highly protecting at least 30 per cent of the ocean by 2030 and building ocean resilience’.

#### *Former Commissioner Vella’s position*

7. Former Commissioner Vella has been asked to join the Ocean Unite Network referred to in paragraph 6 above. He would hence be expected to defend, support and communicate on the NGO’s work and support its goals.
8. Former Commissioner Vella would also have specific missions, such as participating in events to help secure further progress in ocean conservation. He would focus on the four main priorities for 2020 as stated above in paragraph 4.
9. Former Commissioner Vella would not engage in activities involving direct lobbying of any EU institution, and would not get any remuneration expect for the reimbursement of travel expenses.

#### *Funding of Ocean Unite*

10. Ocean Unite relies on donations, sales of products such as organic clothes, and partnerships. This includes partnerships with philanthropists, businesses, organisations and foundations for core support and specific projects.
11. Ocean Unite has not received any funding from the European Commission to the Committee’s knowledge.

*b) Sustainable Ocean Alliance (SOA)*

12. Sustainable Ocean Alliance (SOA) is a non-profit organisation founded in 2014 and based in San Francisco that states that it ‘develops leaders, cultivates ideas and accelerates solutions in the field of ocean health and sustainability’.
13. SOA addresses ‘threats to the global ocean through two different programs, in alignment with the United Nation’s Sustainable Development Goal number 14. First, the Ocean Leadership program aims at training young people to take action and giving them a voice in order to fight for oceans’ needs. Second, the Ocean Solution Accelerator is a program for entrepreneurs that are building start-ups using new technologies and business models to build solutions for the oceans’ biggest challenges.
14. SOA declares to work in more than 155 countries, support more than 1,000 Ocean Impact Projects on the global scale and have accelerated 20 ocean-tech start-ups in two years.

*The organisation of SOA*

15. Its governance structure consists of a Board of Directors with five members and a team led by a Chief Executive Officer.
16. The team is composed of a “Sustainable Ocean Alliance Team”, with ten employees among which the CEO, whose work is to focus on the main activity of the NGO, i.e. the two above mentioned programs. SOA is also relying on the “Ocean Leadership Strategic Growth Fellows”, who are regional leaders and ambassadors for the Ocean Leader community. They represent the NGO abroad in their respective regions. Finally, SOA has two advisors who work as policy and partnerships advisors.
17. SOA intends to create a Global Policy Advisory Council (GPAC) that would leverage the extensive experience of high-level political and governmental experts, influential activists and ocean leaders. It would provide expertise, guidance and support for SOA’s initiatives. The board expertise of the GPAC would provide guidance on different areas such as marine pollution, sustainable fisheries and climate change.

*Former Commissioner Vella’s position*

18. Former Commissioner Vella has been asked to join the inaugural Global Policy Advisory Council. In this position, former Commissioner Vella would be expected to attend SOA-organised GPAC meetings at key international forums. He would have to provide input on SOA’s annual policy priorities and, as needed, on key SOA policy outputs. He would have to collaborate with SOA’s Youth Policy Advisory Council to help connect the dots between youth priorities and the high-level policy agenda. He

would also have to champion SOA's policy initiatives with influential networks and connect SOA with collaborators. Finally, he would have to provide advice on how to best amplify the voice of SOA young leaders.

19. Former Commissioner Vella would not be remunerated for this position. His expenses related to the position would not be covered either.
20. He would not engage in direct activities involving lobbying EU institutions.

#### *Funding of SOA*

21. SOA relies on sponsorships and donations. SOA has not received any funding from the European Commission, as far as the Committee knows.

#### *c) Treelion Foundation*

22. The Treelion Foundation has been established in 2019 and is registered in Singapore. The main office is located in Hong Kong. The foundation is linked to Treelion and the Elion Group.
23. The Foundation is a blockchain-based company that aims to drive green development oriented investments. It is 'dedicated to global cause of environmental protection and desertification control' and wants to 'promote social and public welfare undertakings'. It focuses on 'desertification and ecological protection; on resolving issues in land, air, soil and biological pollution to promote ecological civilization construction'; on forging 'sustainable and green business pattern by combining ecology, finance and internet, aiming to build the largest green digital data ecosystem'; on the use of blockchain technology to record data on global environment and biological diversity'; on building a 'big data platform of global ecology'; on promoting green cooperation among international, regional, national and local levels'; on creation development opportunities for sharing and establishing ecological civilization'.

#### *The organisation of Treelion Foundation*

24. The Treelion Foundation has been established and operated by the Elion Group, which is, according to the website of the Foundation 'an UN-recognised Chinese leading company and a world leader in ecological restoration and desertification control'.
25. The governance of the Treelion Foundation consists of a Steering Committee (chaired by the founder and chairman of the Elion Group, and co-chaired by a former Executive Director of UNEP and previous Minister of Environment in Norway) and a Foundation Council, which is composed of representatives from Elion and two directors from other companies in the financial sector.

26. The Advisory Board, which is expected to meet once a year, is to give strategic advice and to use its networks to promote green investments.

#### *Former Commissioner Vella's position*

27. Former Commissioner Vella has been asked to join the Advisory Board of the Treelion Foundation. This would mean meeting once a year to give strategic advice and promote the organisation's activities.
28. He would be remunerated for this position through a 'green digital currency, TRN, under a transparent arrangement and declaration of interests'. His possible travelling expenses for meetings would be covered by the Foundation.
29. Former Commissioner Vella would not engage in any lobbying activities towards the EU institutions.

#### *Funding of Treelion Foundation*

30. The Treelion Foundation's main earnings come from issuing CCER/CER certificates (which represents 85% of its revenue) while 15% come from donations from public and private entities. They also earn money through the return on investment into green ecological projects.
31. The Treelion Foundation or the Elion Group have not received any funding from the European Commission, as far as the Committee is aware.

#### **Legal context**

32. 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.*

33. 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.*

34. 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.*

35. 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.*

36. 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**

37. 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.
38. Regarding Ocean Unite, former Commissioner Vella will be engaging in networking activities, attending events related to ocean conservation, generally support, and amplify the messages and positions of Ocean Unite. The activity is not related to the acquisition or distribution of funds, and does not involve any direct activities of lobbying the EU institutions.
39. The former Commissioner's envisaged contribution to the protection of oceans and environmental awareness does not represent a risk with regard to the interests of the Commission.
40. Regarding the Sustainable Ocean Alliance (SOA), former Commissioner Vella intends to become a member of the Advisory Council. This Council's role is to provide expertise, guidance and support for SOA's initiatives, but is not involved in operational day-to-day management nor in acquiring or distributing funds. This does not represent a particular risk with regard to the interests of the Commission either.
41. With regard to both activities, the Committee does not see any legal or other impediments to accepting the functions as long as former Commissioner Vella respects the obligations set out in the Treaties and the Code of Conduct.



42. The Committee highlights in this regard in particular Article 11(4) of the Code of Conduct, i.e. the obligation not to lobby Members or staff of the Commission on behalf of Ocean Unite or SOA on matters for which he was responsible within his portfolio for a period of two years after ceasing to hold office. However, 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 a possible participation in public events or general exchanges of, and on, publicly available information with Members of the Commission or Commission staff.
43. In addition to these two activities, former Commissioner Vella wants to become a member of the Advisory Board of the Treelion Foundation.
44. Based on the information, which is available about the Foundation, the Committee does not see any reason to refuse the authorisation of the envisaged activity. It recommends, however, stressing in the Commission decision the importance to respect Articles 245 and 339 TFEU at all times.
45. Given the very recent creation of the Foundation and its close links with the promotion of green investment interests, the decision should emphasise the general obligations set out in Article 11(1) of the Code, in conjunction with Article 5, namely that former Members of the Commission have to act at all times in compliance with the duty of integrity and discretion as well as the duties of collegiality and discretion with respect to the Commission's decisions and activities during their term of office.

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