



Strasbourg, 6.7.2021
C(2021) 9015 final

DECISION OF THE EUROPEAN COMMISSION

on Former Commissioner Miguel Arias Cañete's post term of office professional activities with Beka Finance and Balam Agriculture

DECISION OF THE EUROPEAN COMMISSION

on Former Commissioner Miguel Arias Cañete's post term of office professional activities with Beka Finance and Balam Agriculture

THE EUROPEAN COMMISSION,

Having regard to the Treaty on European Union,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to the Commission Decision of 31 January 2018 (C(2018) 700 final) on a Code of Conduct for the Members of the European Commission, and in particular Article 11(3) thereof,

Whereas:

- 1) According to Article 245(2) of the Treaty on the Functioning of the European Union, the Members of the Commission, when entering upon their duties, 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.
- 2) Article 339 of the Treaty on the Functioning of the European Union provides that the Members of the institutions of the Union shall be required, even after their duties have ceased, not to disclose information of any kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.
- 3) Article 11 of the Code of Conduct for the Members of the European Commission establishes a specific procedure for the assessment of planned professional activities which the Members or former Members of the Commission intend to take up after they have ceased to hold office. 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. If the planned activity is related to the portfolio of the Member or former Member, the Commission shall decide only after having consulted the Independent Ethical Committee unless the planned activity falls within the exceptions set out in paragraph 3, second subparagraph, lit. (a) to (f).
- 4) On 24 March 2021, Former Commissioner Arias Cañete notified his intention to engage in two remunerated post term of office activities with Beka Finance and with Balam Agriculture. Mr Arias Cañete explained that his envisaged activity with Beka Finance would consist of chairing the Investment Committee of its Agrobusiness Fund

and that his envisaged activity for Balam Agriculture would consist of serving as an Independent Director in its Board of Directors.

- 5) Mr Arias Cañete explained that Beka Finance is an independent Spanish financial institution founded in 1989 and supervised by the Spanish and Portuguese financial regulators.
- 6) The Former Commissioner also explained that Balam Agriculture is a new company which results from the merger of two existing companies, namely ‘Galvez Productos Agroquímicos’ and ‘CBH Agro Innova’. Mr Arias Cañete added that he would be supposed to provide strategic support and his experience in the development of the corporate management and the different business lines.
- 7) Former Commissioner Arias Cañete’s portfolio on ‘Climate Action and Energy’ had links with the agricultural sector, notably in relation to emissions, removal and storage of greenhouse gases. It was therefore considered that both activities might present at least an indirect link with the Former Commissioner’s portfolio. Against this background, in line with Article 11(3) of the Code of Conduct for the Members of the Commission, the Commission requested, on 9 April 2021, the Independent Ethical Committee’s opinion on the compatibility of the two envisaged activities with Article 245 of the Treaty on the Functioning of the European Union.
- 8) On 21 May 2021, the Committee delivered its two opinions, one regarding the activity with Beka Finance and the other on the activity with Balam Agriculture.

Independent Ethical Committee’s factual assessment regarding Beka Finance

- 9) The Committee analysed the nature of Beka Finance, its main business lines, its funding, its links with the European Commission and Former Commissioner Arias Cañete’s expected position.
- 10) The Committee noted that Beka Finance is a global investment bank, established in 1989 and headquartered in Madrid. It provides financial services to a clientele composed of public companies, individuals and large and medium-sized private corporations. It is an independent Spanish financial institution supervised by two regulators, the Spanish and Portuguese securities market authorities. The Committee furthermore noted that Beka Finance has three main business lines: investment banking & capital markets, wealth management and asset management. Its governance structure is composed of a Board of Directors, 7 partners, a management team and heads of corporate services.
- 11) As regards Beka Finance’s funding, the Committee took note that, according to the Financial Transparency System of the European Commission, this entity did not receive EU funds directly administered by the Commission departments, its staff in the EU delegations, through executive agencies or of the European Development Fund.
- 12) The Committee also noted that Beka Finance is not registered in the Joint Transparency Register of the European Parliament and the Commission.

- 13) As regards Former Commissioner Arias Cañete's envisaged position, the Committee noted that his activity would consist of serving as Chairman of the Investment Committee of the Agrobusiness Fund of Beka Finance and that he would be remunerated for this function. The Committee underlined, based on the information provided by Mr Arias Cañete, that Beka Finance considered that his experience in the sector would help guarantee a successful performance for investors participating in the fund. The Committee also noted that Mr Arias Cañete's main responsibilities as Chairman of the Investment Committee would be: identifying investment opportunities in the agrobusiness field; analysing in detail those investment opportunities; recommending which are the best options to invest in; monitoring in detail all the investments in which the Fund is invested; and being aware of such investments until the moment of divestment.

Independent Ethical Committee's factual assessment regarding Balam Agriculture

- 14) The Committee analysed the nature of Balam Agriculture, of the two pre-existing companies (Galvez Productos Agroquímicos and CBH Agro Innova), their funding, their links with the European Commission and Former Commissioner Arias Cañete's expected position.
- 15) The Committee noted that Galvez Productos Agroquímicos is a Spanish family business dedicated to the work of plantations, irrigation, fertilizers and phytosanitary treatments, harvesting and pruning. This company sells services that include crop analysis, certification and sale of fertilizers, phytosanitary products and seeds. According to publicly available information, 'Galvez Productos Agroquímicos' has its own 'Research, Development and Innovation Department' in charge of carrying out 'the tests that will optimise the resources of their customers and thus achieve maximum efficiency and effectiveness'. This Department has agreements with different universities throughout the Spanish territory, in addition to participating in several European projects with different agencies in other countries.
- 16) The Committee furthermore noted that, according to publicly available information, CBH Agro Innova was founded in 1997 in Spain as a distributor of phytosanitary products. It is one of the leading companies in the olive sector, which positions the firm 'as a benchmark company in the olive sector worldwide'. CBH Agro Innova has five lines of business, namely: 'CBH Fito': distribution and commercialisation of phytosanitary and nutritional products; 'CBH Aqua': design and installation of irrigation systems, with a specialisation in high-density woody crops; 'CBH Serv': agricultural services such as earthmoving, land preparation, foliar and herbicide applications, mechanised planting of woody crops, harvesting of high density crops; 'CBH Api': integrated production of intensive and high-density plantation; 'CBI I+D+I': department specialised in production systems, fight against pests and diseases, nutrition, new crops, new varieties, etc..

- 17) The Committee noted that there is no publicly available information on Balam Agriculture's status and governing structure.
- 18) On funding, the Committee noted that, according to the Financial Transparency System of the European Commission, neither Balam Agriculture, nor Galvez Productos Agroquímicos nor CBH Agro Innova received EU funds directly administered by the Commission departments, its staff in the EU delegations, through executive agencies or of the European Development Fund.
- 19) The Committee noted that Balam Agriculture is not registered in the Joint Transparency Register of the European Parliament and the European Commission; neither were Galvez Productos Agroquímicos nor CBH Agro Innova before the creation of Balam Agriculture.
- 20) Finally, as regards Former Commissioner Arias Cañete's envisaged position, the Committee noted that his envisaged activity with 'Balam Agriculture' would consist of serving as 'Independent Director' in the company's Board of Directors and that he would be remunerated for this function. The Committee underlined, based on the information provided by Mr Arias Cañete, that he would be notably in charge of the strategic support and the new company's position in the agriculture sector, providing experience in the development of corporate management and the different business lines.

Independent Ethical Committee's conclusions: Beka Finance and Balam Agriculture

- 21) Based on this analysis, the Committee assessed the compatibility of Former Commissioner Arias Cañete's envisaged activities with Beka Finance and Balam Agriculture, against the framework of the applicable legal context.
- 22) First, and in line with previous opinions, the Committee recalled that former 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, while this right needed to be balanced with the obligations set out in Article 245 of the Treaty on the Functioning of the European Union and in the Code of Conduct for the Members of the European Commission. The Committee underlined that the balance has to be proportionate. It can be achieved by imposing restrictions and conditions on a new professional activity where those restrictions and conditions would be more proportionate than a simple prohibition or authorisation of an activity. The Committee underlined that the Code of Conduct provided the framework in which the Commission had to establish this balance between the rights and obligations of its Members with regard to concrete, new activities. The Committee noted that this balance cannot be established based on an automatic scheme and requires a case-by-case approach, which takes into account the context and particularities of each individual.

- 23) Concerning Mr Arias Cañete's specific positions with Beka Finance and Balam Agriculture, the Committee noted that Former Commissioner Arias Cañete's envisaged tasks for both entities are, as such, not directly related to his former portfolio and will normally not require any interaction with the Commission. The Committee noted nonetheless that there was a risk that specific information or insights that Former Commissioner Arias Cañete had obtained during his term of office would be relevant for business decisions of the Investment Committee of the Agrobusiness Fund of Beka Finance and of the Board of Directors of Balam Agriculture. This might concern information obtained in areas falling within his Commission portfolio or in other areas in which he was involved via his collegial responsibilities in the Commission.
- 24) The Committee considered it important that both Former Commissioner Arias Cañete and the entities for which he envisages to work, namely Beka Finance and Balam Agriculture are fully aware of the obligations of former Members of the Commission, which continue to apply after their term of office.
- 25) The Committee recommended therefore that the Commission decision should include a condition that Commissioner Arias Cañete shares a copy of the Commission Decision with Beka Finance and Balam Agriculture and confirms this to the Commission. This would ensure full transparency of the applicable obligations, conditions and restrictions towards the companies 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 companies.
- 26) Regarding restrictions, the Committee deemed 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.
- 27) The Committee also considered that the Commission decision should 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 Arias Cañete'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 Arias Cañete obtained during his mandate, be it within his portfolio responsibilities or within the College.

- 28) Compliance with this restriction appeared to the Committee as particularly important concerning information relating to Mr Arias Cañete's former portfolio on Climate Action and Energy which may be of interest for both companies. The Committee underlined moreover that, if an activity of the Investment Committee of the Agribusiness Fund of Beka Finance related to such protected information and if the Former Commissioner were involved in this activity, he should recuse himself from the decision and document his decision.
- 29) The Committee also considered that the Commission 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 Commission decision should extend this, in the present case, to all matters in which former Commissioner Arias Cañete was involved at College level, even if he was not directly responsible for them through his portfolio responsibilities.
- 30) The Committee recalled that, as the provisions of the Treaties are not limited in time, the general duties of integrity and discretion established by Article 245 continue to apply even after two years. The Commission should therefore recall in its decision that these duties continue to apply to any possible contacts with the European Commission and its staff on behalf of Beka Finance and of Balam Agriculture, even if Article 11(4) of the Code of Conduct does not apply anymore.
- 31) The Committee considered finally that the Commission 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 of Conduct.
- 32) Based on the above-mentioned considerations, the Committee concluded, in its two opinions, that the envisaged activities could be considered compatible with Article 245 TFEU and authorised on the condition that the above-mentioned obligations, conditions and restrictions would be explicitly and in full set out in the Commission decision and brought to the attention of Former Commissioner Arias Cañete, of Beka Finance and of Balam Agriculture.
- 33) The Commission has considered the Independent Ethical Committee's opinions on the two notified activities and shares its conclusions.

HAS DECIDED AS FOLLOWS:

Sole Article

Former Commissioner Miguel Arias Cañete's envisaged activities as chair of the Investment Committee of Beka Finance's Agrobusiness Fund and as an Independent Director in the Board of Directors of Balam Agriculture are compatible with Article 245(2) of the Treaty on the Functioning of the European Union, subject to the strict respect, by Mr Arias Cañete, of the general obligations which apply to former Members of the Commission and, in particular, subject to the following conditions and restrictions:

- Former Commissioner Arias Cañete shall formally, in writing, share a copy of the present Decision with Beka Finance and with Balam Agriculture and shall confirm this to the Commission.

- In accordance with Article 339 of the Treaty on the Functioning of the European Union, Former Commissioner Arias Cañete shall refrain from participating in any activity or decision-making procedure within Beka Finance or Balam Agriculture which might involve using information of the kind covered by the obligation of professional secrecy regarding, in particular, undertakings, their business relations or their cost components. This obligation continues to apply beyond the end of the two-year period following the end of Mr Arias Cañete's mandate as Member of the European Commission;

- In line with Article 11(1), in conjunction with Article 5, of the Code of Conduct for the Members of the Commission, Former Commissioner Arias Cañete remains bound by the duties of collegiality and discretion with respect to the Commission's decisions and activities during his 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 he obtained during his mandate, be it within his portfolio responsibilities or within the College. Mr Arias Cañete shall in particular show the utmost constraint as regards information relating to his former Commission portfolio on Climate Action and Energy which might be of interest for the two companies. In particular, Mr Arias Cañete shall recuse himself from any activity and/or any decision of the Investment Committee of the Agrobusiness Fund of Beka Finance, and shall document his decision, in case the activity or decision is related to such information.

- In accordance with Article 11(4) of the Code of Conduct for the Members of the Commission, during a period of two years following his term of office, Former Commissioner Arias Cañete shall refrain from lobbying the Members of the Commission or Commission staff on behalf of Beka Finance and of Balam Agriculture on matters for which he was responsible during his mandate and, more generally, on matters in which the Former Commissioner was involved at College level, even if he

was not directly responsible for them through his portfolio responsibilities. This includes any potential activity with a view to obtaining EU funding;

- Former Commissioner Arias Cañete shall bear in mind that the duties of integrity and discretion established by Article 245 of the Treaty on the Functioning of the European Union continue to apply, even after two years, to any possible contacts with the European Commission, on behalf of Beka Finance and Balam Agriculture;
- In line with Article 13(2) of the Code of Conduct for the Members of the Commission, Former Commissioner Arias Cañete will inform the President of the Commission, in case of doubt with regard to the application of the Code of Conduct or the application of this decision, in a timely manner and before acting on the matter relating to which the doubts arise.

Done at Strasbourg, on 6 July 2021.

The President
Ursula von der Leyen