

Opinion
of the
Independent Ethical Committee
established
by the European Commission
11 May 2020

Subject: Request for an opinion on former High Representative of the Union for Foreign Affairs and Security Policy and former Vice-President of the European Commission Federica Mogherini’s envisaged post term of office activity as Member of the Board of Trustees of the International Crisis Group

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 29 January 2020, the Secretary-General of the European Commission asked the Committee, on behalf of the President of the Commission, to deliver an opinion on the compatibility of former High Representative of the Union for Foreign Affairs and Security Policy and former Vice-President of the European Commission (HR/VP) Federica Mogherini’s envisaged post-term of office activity as Member of the Board of Trustees of the ‘International Crisis Group’ with Article 245 of the Treaty on the Functioning of the European Union.
2. The Committee asked the Commission for further information on the activity envisaged by Ms Mogherini and received this information on 26 April 2020.

Facts

3. The International Crisis Group (ICG) is a non-profit and non-governmental organisation founded in 1995 and based as a legal entity in Washington DC, United States (U.S.). The International Crisis Group is also registered as a not-for-profit organisation in Belgium, as a branch of the U.S. entity. This office constitutes the international operational headquarters of the International Crisis Group.

4. The International Crisis Group is a think-tank, of which the stated mission is to 'prevent wars and shape policies that will build a more peaceful world' and build support for 'good governance and inclusive politics that enable societies to flourish'. Its declared goals are to prevent conflicts or resolve them.
5. The International Crisis Group's reported working methodology is threefold: (1) field research, involving 'analysts engaging with all parties to a conflict and proposing practical policy solutions' and conducting research on the ground; (2) independent analysis, leading to the publication of reports; (3) high-level advocacy, working with 'heads of government, policymakers, media, civil society and conflict actors to sound the alarm', and promoting peace-building.

The organisation of the International Crisis Group

6. The International Crisis Group has registered offices in London, New York, Washington DC, Bogota, Dakar, Nairobi and Istanbul, and its international headquarters are located in Brussels. Its staff is composed of 110 people across all offices.
7. The International Crisis Group's governance structure is composed of the President and Chief Executive Officer (CEO), Robert Malley, assisted by his own team. The Board of Trustees's self-declared role is 'leadership' of the organisation. It is composed of 45 high-level members from 33 countries. Former HR/VP Mogherini has informed the Commission that the Board of Trustees has an 'advisory nature' and is composed of unpaid volunteers.

Former HR/VP Mogherini's position

8. Former HR/VP Mogherini has informed the Commission that she has been invited to join the International Crisis Group's above-mentioned Board of Trustees. She has informed the Commission that in this capacity, she would be expected to participate, on a voluntary basis, in the meetings of the Board of Trustees, taking place twice a year, to exchange views with the other members on current international affairs and review the overall strategic direction of the organisation. In a letter that former HR/VP Mogherini shared with the Commission, the General Counsel of International Crisis Group confirmed this.
9. Former HR/VP Mogherini has also informed the Commission that she would not hold any specific governance power over the International Crisis Group's organisation, nor any responsibility on funding proposals. She has also declared that she would not receive any form of remuneration for this role. She has furthermore specified that the International Crisis Group has offered to underwrite all expenses incurred by Trustees when attending meetings of the Board, such as air travel and accommodation costs, whilst encouraging the Trustees in a position to do so to cover these costs themselves.

10. Former HR/VP Mogherini has confirmed that the activity would not imply under any circumstances sharing the confidential information that she acquired during her mandate as HR/VP. She has also underlined that, as Trustee, she would continue to fully comply with the principles of discretion, integrity and independence envisaged by the Code of Conduct for the Members of the European Commission.

Funding of the International Crisis Group

11. According to publicly available information, the International Crisis Group relies on funding from governments, charitable foundations, private companies and individual donors. Donors include corporations and individuals through membership fees.
12. The International Crisis Group received European Union funding in 2016, under the Instrument Contributing to Stability and Peace program (IcSP), for a total amount of 2,500,000 euro, and in 2017, under the European Neighbourhood Instrument (ENI), for a total amount of 40,000 euro.

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. As a member of the Board of Trustees of the International Crisis Group, former HR/VP Mogherini would be attending, on a voluntary and unpaid basis, twice-yearly meetings of the Board, during which she would discuss current geopolitical events and comment on the overall strategy of the organisation. According to the information given by Ms Mogherini and the International Crisis Group, the activity would not entail any involvement in the acquisition or implementation of EU funding, and, and would not involve any lobbying towards the EU institutions.
20. The former HR/VP's envisaged activity, via her membership of the Board of Trustees, in the area of peace-building and conflict mediation does not represent a risk with regard to the interests of the Commission and the European Union.
21. The Committee notes that the objectives of the International Crisis Group and former HR/VP Mogherini's involvement are not for profit and aim to achieve objectives that are widely shared, including by the European Union. Ms Mogherini's explicit assurances show that she is fully aware of her obligations under the Code of Conduct for Commissioners.
22. The Committee concludes that, in its view, Ms Mogherini's intended post-mandate activity as Member of the Board of Trustees of the International Crisis Group is compatible with Article 245 of the Treaty on the Functioning of the European Union.
23. The Commission might however wish to recall that former HR/VP Mogherini remains bound by Article 11(4) of the Code of Conduct, laying down the obligation to refrain from lobbying Members or staff of the Commission on behalf of the International Crisis Group on matters for which she was responsible within her portfolio for a period of two years after ceasing to hold office. 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.
24. Given the link between the intended activity and former HR/VP Mogherini's portfolio when she was a Member of the Commission, the decision should also recall the confidentiality obligation laid down in Article 339 of the Treaty on the Functioning of the European Union, as well as the general obligations set out in

Article 11(1) of the Code, in conjunction with Article 5. The latter Articles of the Code provide that former Members of the Commission continue to be bound by the duty of integrity and discretion as well as by the duties of collegiality and discretion with respect to the Commission's decisions and activities during their term of office.

25. The Commission might also wish to include a reminder, in its decision, that in accordance with Article 11(2) of the Code of Conduct, the intention to engage in professional post-mandate activities such as former HR/VP Mogherini's appointment to the Board of Trustees, need to be notified to the Commission with a minimum of two months' notice during a period of two years after the former Member has ceased to hold office.

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