

Opinion
of the
Independent Ethical Committee
established
by the European Commission
29 May 2021

Subject: Request for an opinion on former Commissioner Carlos Moedas’s post-term of office activity as regards his activity for the ‘Aga Khan University’

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 19 May 2021, 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 Carlos Moedas’s post-term of office activity as regards his activity for the ‘Aga Khan University’, in order to ensure compliance with Article 245 of the Treaty on the Functioning of the European Union.

Facts

General information

2. On 24 March 2021, former Commissioner Moedas informed the Commission that he intended to accept an assignment as member of the Chancellor’s Commission of the Aga Khan University (AKU).
3. All philanthropic, social, cultural, educational and academic activities of the Aga Khan are placed under the umbrella of the Aga Khan Development Network (AKDN). The AKDN works in over 30 countries around the world. It currently ‘has over 1 000 programmes and institutions - many of which date back over 60 years’.
4. The AKDN is composed of 10 entities including the Aga Khan University.

5. The Aga Khan University is a private and autonomous university created in 1983. It is chartered by the Government of Pakistan as an international university with the authority to operate programmes and campuses anywhere in the world.
6. According to Article 4 of its Charter, the purposes of the University ‘shall be the promotion and dissemination of knowledge and technology and to provide for instruction, training, research, demonstration and service in the health sciences and such other branches of learning in Pakistan and abroad as the University may determine.’ Moreover, ‘the University shall be a fully autonomous body with freedom to govern its academic functions in order to achieve its objectives.’
7. The two main departments of the university are the Faculty of Arts and Sciences and the Faculty of Health Sciences. In addition, as part of its health sciences program, the Aga Khan University operates 7 teaching hospitals and 300 outreach medical centres in South Asia and East Africa.
8. The Aga Khan University has currently more than 2 800 students (16 287 alumni) across campuses in six countries (Pakistan, Kenya, Tanzania, Uganda, Afghanistan and the United Kingdom).
9. The governance structure of the university is composed of a Chancellor (His Highness the Aga Khan), a Board of Trustees composed of 16 members which ensures ‘the general supervision and control of the university’ and a President who is also the Chief executive officer of the university. The latter is ‘the chief academic and administrative officer of the university and shall have overall responsibility for the direction, organisation, administration and programmes of the university in accordance with the guidelines and general policies formulated by the Board and for the implementation of the decisions and policies of the Board of trustees.’

Funding

10. According to the Financial Transparency System of the European Commission, the ‘Aga Khan University’ received EU funds directly administered by the Commission departments, its staff in the EU delegations, through executive agencies or of the European Development Fund.
11. In 2019, the Aga Khan University with seven other universities were the beneficiaries of a grant for an action called ‘leveraging evidence to reduce perinatal mortality and morbidity’. This grant was awarded by the Directorate-General for Research and Innovation in the framework of the programme ‘Horizon 2020’. In 2018, AKU received a grant from the European Research Council Executive Agency in the framework of the programme ‘Horizon 2020’ for ‘exploring cultural memory in the pre-modern Islamic world’. In 2017, AKU was the beneficiary of a grant with 13 other universities from the Education, Audiovisual and Culture Executive Agency in the framework of the ‘Development Cooperation Instrument’ for an action called ‘international higher education capacity building’.

Links of 'Aga Khan University' with the European Commission

12. The Aga Khan University is not registered in the Joint Transparency Register of the European Parliament and the Commission.

Former Commissioner Moedas's position

13. Former Commissioner Moedas envisaged activity with the Aga Khan University will consist of serving as member of the Chancellor's Commission. This is the second Chancellor's Commission set up to reflect on the university activities since its creation. This Commission will be a panel of experts convened to provide recommendations on the future of the university and higher education.
14. The Aga Khan together with the University's Board of Trustees have 'called for the appointment of distinguished global panel with a mandate to conduct a fulsome assessment of the development of the institution in its first 40 years and then to propose a roadmap for its next 25 years.'
15. The Chancellor's Commission will comprise 12-14 core members, including two co-chairs. The majority of its members will be external to the university. Only five members will be from the Aga Khan University's Board of Trustees. AKU has sought to 'establish a diverse Commission, with consideration given to gender, age, geography (countries of AKU's current or future focus), academic discipline or profession.'
16. The Chancellor's Commission will consider progress against recommendations set out for the Aga Khan University in a first Chancellor's Commission (1992-1994). It will address questions concerning geographical balance, growth into a full-scale liberal arts university, the future of its health services interests, strategies to strengthen capacity for high impact research, institutional viability and sustainability, and the intellectual, technical and financial resources and governance structures necessary to achieve AKU's future ambitions.
17. It is expected that the full chancellor's Commission will meet approximately six times over a two-year period (June 2021- June 2023). The primary deliverable for this Commission will be a formal report which will be reviewed and approved by its members before its submission to the Chancellor of the Aga Khan University in 2023.

Legal context

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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

24. 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.

25. Former Commissioner Moedas intends to accept a position as member of the Chancellor's Commission of the Aga Khan University. This university is one of the entities of the 'Aga Khan Development Network' which among other things brings together the educational and academics activities of the Aga Khan. This university is a private and autonomous university created in 1983. It is chartered by the Government of Pakistan as an international university.

26. As a member of the Chancellor's Commission, Mr Moedas will be part of a panel of experts whose task is to address questions such as geographical balance issues, growth into a full-scale liberal arts university, health services future, strategies to strengthen capacity for high impact research and financial resources and governance structures necessary to achieve AKU's future ambitions.

27. As such, the Committee does not consider this envisaged activity to represent a risk with regard to the interests of the Commission and the European Union. Mr Moedas would only meet six times over a two-year period (June 2021- June 2023) with other members of the Chancellor's Commission. In addition, the envisaged position is not directly linked to the acquisition or distribution of EU funds and will normally not require any interaction with the European Commission.

28. The Committee does therefore not see any legal or other impediments to accepting an assignment as member of the Chancellor's Commission of the Aga Khan University. However, a number of restrictions should be recalled and set out explicitly in the Commission decision based on Article 11(3) of the Code of Conduct, in order to ensure the compatibility of the activity with the obligations applying after the end of the mandate.
29. The Committee advises the Commission to recall the provisions of Article 11(4) of the Code in its decision. Indeed, this article provides that '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 own portfolio'. The Commission decision should clarify that the term 'lobbying' includes indirect lobbying in the sense of influencing the Commission 'through the use of intermediate vectors such as media, public opinion, conferences or social events, targeting the EU institutions' as set out in paragraph 7 of the Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation and applies independently of the location of the employment. This would also cover any potential activity with a view to obtaining EU funding. The prohibition to lobby does not affect participation in public events or general exchanges of, and on, publicly available information with Members of the Commission or Commission staff.
30. Moreover, there is a risk that specific information or insights that former Commissioner Moedas obtained during his term of office are relevant to the work of the Chancellor's Commission of the Aga Khan University. This can concern information obtained in areas falling within his previous portfolio in the Commission or in other areas in which he was involved via his collegial responsibilities in the Commission.
31. As a result, the Commission decision should stress 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.
32. The Commission decision should also underline the importance for former Commissioner Moedas to comply with the duties of collegiality and discretion, as laid down in Article 11(1) and Article 5 of the Code of Conduct, 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 former Commissioner Moedas obtained during his mandate, be it within his portfolio responsibilities or within the College.

33. Compliance with this restriction is particularly important concerning information relating to Mr Moedas's former portfolio on Research, Science and Innovation which may be of interest for the Chancellor's Commission. Should any activity of this Commission be related to such protected information and the former Commissioner be involved in this activity, he should recuse himself from this discussion or file.
34. Finally, 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.
35. Therefore, based on the above-mentioned information, the Committee concludes that the envisaged activity would be compatible with Article 245 TFEU, subject to the respect of the conditions specified in this opinion.

Dagmar Roth-Behrendt

Allan Rosas

Heinz Zourek