

**Opinion**  
of the  
**Independent Ethical Committee**  
established  
by the European Commission  
**17 July 2020**

**Subject: Request for an opinion on Former Commissioner Vytenis Andriukaitis envisaged post term of office activity as Member of the Governance Board of the TuBerculosis Vaccine Initiative (TBVI)**

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**

1. On 7 July 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 Andriukaitis' envisaged post-term of office activity as Member of the Governance Board of the TuBerculosis Vaccine Initiative with Article 245 of the Treaty on the Functioning of the European Union.
2. On 8 July 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 consequently participated neither in the deliberations on this file nor in the adoption of the present opinion.

## **Facts**

### *TuBerculosis Vaccine Initiative (TBVI)*

3. The TuBerculosis Vaccine Initiative is a not-for-profit organisation, founded in 2008 in the Netherlands under the Public Benefit Organisations system. Its registered office is located in Lelystad, Netherlands. Its statute indicates that the foundation “serves the general interest”.
4. The launch of TBVI in 2008 was supported and part-funded by the European Commission through the project “Establishment, strategy and initial activities of the tuberculosis vaccine initiative: coordination of European efforts with global research initiatives” under the EU’s Seventh Framework Programme for Research and Technological Development.
5. TBVI is a “Research and Innovation partnership that works to discover and develop new, safe and effective tuberculosis vaccines that are accessible and affordable for all people”. According to TBVI’s website, the organisation is a consortium of experts and stakeholders created to facilitate the discovery and development of vaccines against tuberculosis: it is neither a vaccine producer, nor a laboratory or a pharmaceutical company.
6. The goals of the organisation, as stated in its legal statutes, are fourfold. First, TBVI aims to support and promote the European efforts in the field of tuberculosis vaccines development, focusing primarily on the development of new vaccines and the mobilisation of funding and investment. Second, TBVI aims to bring together European efforts in the field of tuberculosis research with other European and global initiatives. Third, TBVI wants to “form contacts with the private industry to facilitate developments in aforesaid field” and fourth to perform any other work related to the above.
7. In order to achieve their stated goals, TuBerculosis Vaccine Initiative focuses on three main activities, which are product development of vaccines and biomarkers, collaborative research and innovation, and the “global and European cooperation and coordination of tuberculosis vaccine research”.
8. More specifically, TBVI supports collaborative research and innovation by bringing together a consortium that includes more than 50 partners from academia, research institutes, government institutes, and biotech and vaccine companies. The organisation describes itself as “an honest broker”, whose activities are (1) to provide services and technical advice for product development, (2) to perform project identification, (3) to ensure development and management of the consortium and (4) to mobilise resources and funding.
9. Finally, the organisation also works through the Global Tuberculosis Vaccine Partnership (GTBVP), a “leadership working group” which aims to develop further tuberculosis vaccines and sets global working standards followed by TBVI.

### *The organisation of TuBerculosis Vaccine Initiative (TBVI)*

10. According to the legal statutes, TuBerculosis Vaccine Initiative is composed of four governing bodies, which are the Governance Board, the Executive Director of TBVI, the Advisory Committee and the company office.
11. The Governance Board of TBVI is in charge of the management of the foundation, including keeping a record of its assets. The Board also represents the foundation and can perform legal acts. The Executive Director, appointed by the Board, is entrusted with the day-to-day management of the activities of TBVI and is responsible for the implementation of the Board's resolutions. The Executive Director decides on the allocation of funding. The Advisory Committee is responsible for advising the board in relation to the strategy and the policy of the foundation, as well as advising the Executive Director in relation to research and mobilisation of funds. Finally, the company office, which is composed of legal, business and financial experts, is responsible for communication, finance, administration, legal advice and assistance to the other three bodies.

### *Former Commissioner Andriukaitis's position*

12. Former Commissioner Andriukaitis informed the European Commission about his intention to engage in a post-term of office activity as Member of the Governance Board of the TuBerculosis Vaccine Initiative. In this position, Mr Andriukaitis would be one of the nine members of the Board and would be expected to attend meetings, ensure management of the foundation and represent it externally.
13. According to the information that Mr Andriukaitis provided to the Commission, the members receive no remuneration or fees for their activities but only the reimbursement of their travel expenses.

### *Funding of TuBerculosis Vaccine Initiative*

14. According to the legal statutes, the financial resources of TBVI consist of income and revenue from the activities and the property belonging of the foundation, as well as contributions from the foundation's donors. TBVI also receives subsidies and private contributions. According to their financial statement, TBVI received 46.5 million EUR over the past seven years. This document also mentions that the European Commission is their biggest donor, reaching almost 82% of the funds received between 2010 and 2017.
15. The Foundation does not have commercial interests, since the ownership of vaccine candidates and any intellectual property rights remain with researchers and vaccine developers.

### *Links of TuBerculosis Vaccine Initiative with the European Commission*

16. Information publicly available on the European Commission website indicates that TBVI initially received funding from the European Union between May 2008 and April 2010 in order to launch its first activities and establish a common global research strategy. The project was part-funded by the European Union under the Seventh Framework Programme for Research and Technological Development, through the “Establishment, strategy and initial activities of the tuberculosis vaccine initiative: coordination of European efforts with global research initiatives” project.
17. It subsequently also received support under the EU’s Horizon2020 programme for research and innovation, notably the project “TBVAC2020 - Advancing novel and promising TB vaccine candidates from discovery to preclinical and early clinical development” for which the responsible Commission department is the Directorate-General for Research and Innovation, according to information published on the Financial Transparency System of the European Commission.
18. The TuBerculosis Vaccine Initiative is registered in the Joint Transparency Register of the European Parliament and the Commission. According to the Register, TBVI met with Mr Andriukaitis on 18 September 2019 in Brussels, to discuss tuberculosis policies and the UN high level meeting on tuberculosis. TBVI also met with former Commissioner Moedas in 2015 and the Director-General of DG Research and Innovation in 2016, to present their activities and discuss vaccine research initiatives.
19. The committee also noted that former Commission Andriukaitis made a speech in 2017, declaring that the European Commission would continue to invest in global funds aiming at preventing and treating tuberculosis and other illnesses, especially through vaccination.
20. Finally, the Committee notes that TBVI’s activities and tuberculosis vaccine global research have been supported by the European Parliament in a resolution of 3 February 2011 “on the Tuberculosis Vaccine Initiative (TBVI) – practical implementation of the Europe 2020 strategy with a view to meeting MDG 6 and eliminating tuberculosis by 2050”.

### **Legal context**

21. 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.*

22. 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.*

23. 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.*

24. 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.*

25. 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.*

26. 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**

27. 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, which develops these obligations in more detail.
28. While former Commissioner Andriukaitis's envisaged activity is directly linked to his portfolio when he was a member of the Commission, the activity is fully in line with the European Commission's objectives and its official vaccine policy. The Committee notes in particular that it is an activity without remuneration except for reimbursement of expenses.
29. As a Member of the Board of the TuBerculosis Vaccine Initiative, former Commissioner Andriukaitis would be expected to attend meetings, contribute to the management of the foundation and act as one of its representatives. The Board is the highest body of the foundation; it manages TBVI and keeps record of its assets. The Committee notes in this regard that the activity could be linked to the acquisition or distribution of funds, which is of particular relevance given that TBVI is also funded by European Union funds.
30. In this regard, a number of restrictions should be either recalled or set out explicitly in the Commission decision based on Article 11(3) of the Code of Conduct to ensure the compatibility of the activity with the obligations applying after the end of the mandate. This applies in particular to future decisions of the Commission on the allocation of European Union funds to TBVI.
31. The Committee recommends therefore that the Commission should recall in its decision the general prohibition resulting from Article 11(4) of the Code of Conduct to lobby Members of the Commission or their staff on behalf of the TuBerculosis Vaccine Initiative, on matters for which the Commissioner was responsible, for a period of two years after ceasing to hold office applies. This 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 participation in public events or

general exchanges of, and on, publicly available information with Members of the Commission or Commission staff.

32. Moreover, 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. Should any activity of the Board of TuBerculosis Vaccine Initiative be related to such protected information and the Commissioner be involved in this activity, he should recuse himself from this decision. This concerns in particular any activity that would be related to the management or acquisition of European Union funds for the foundation.
  
33. Finally, the Commission decision should also recall the importance of complying 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 Andriukaitis'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 Andriukaitis obtained during his mandate, be it within his portfolio responsibilities or within the College.
  
34. Under these conditions, the Committee considers that the envisaged activity would be compatible with Article 245 TFEU.

Allan Rosas

Heinz Zourek