

Brussels, 10.6.2020 C(2020) 9024 final

DECISION OF THE EUROPEAN COMMISSION

on Former High Representative / Vice-President Federica Mogherini's post term of office professional activity as member of the Board of Trustees of the International Crisis Group

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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 the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.
- 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 foreseen in Article 11, paragraph 3, second subparagraph, lit. (a) to (f).
- 4) Former High Representative / Vice-President Federica Mogherini informed the Commission, on 14 January 2020, that she had been approinted to a non-remunerated position as member of the Board of Trustees of the International Crisis Group. She stated her belief that this activity was in full compliance with the Code of Conduct for the Members of the Commission.
- 5) The International Crisis Group is a transnational non-profit, non-governmental organisation, which describes itself as "working to prevent wars and shape policies that will build a more peaceful world". It aspires to provide 'independent analysis and advice on how to prevent, resolve or better manage deadly conflict'. It aims at combining 'expert field research, analysis and engagement with policymakers across the world in order to effect change in the crisis situations' on which it works. It

- endeavours 'to talk to all sides and in doing so to build on [its] role as a trusted source of field-centred information, fresh perspectives and advice for conflict parties and external actors'.
- The International Crisis Group is based as a legal entity in Washington, D.C. and also registered as a not-for-profit organisation in Belgium. It has offices in London, New York, Washington DC, Bogota, Dakar, Nairobi and Istanbul, and its international headquarters are located in Brussels. Its governance structure is composed of its President and Chief Executive Officer. The Board of Trustees has an advisory role, notably on the overall strategic direction of the organisation.
- 7) The International Crisis Group received European Union funding in 2016, under the Instrument Contributing to Stability and Peace programme (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.
- 8) The notified activity is linked to Former High Representative / Vice-President Mogherini's previous responsibilities for Foreign Affairs and Security Policy. Therefore, on 29 January, the Secretary-General consulted the Independent Ethical Committee on behalf of the President of the Commission and requested an opinion on the compatibility of the notified activity with Article 245 of the Treaty on the Functioning of the European Union.
- 9) The Committee replied on 17 February to the Secretary-General's letter and asked for additional information about Ms Mogherini's activities for the Board of Trustees. The Committee was also interested in Ms Mogherini's views on whether she considered that she would be able to act as a Trustee in the International Crisis Group without sharing delicate and confidential information acquired during her mandate as High Representative and Vice-President of the Commission.
- Ms Mogherini replied to the Committee's request on 21 February and 26 April with 10) additional information, including a letter from the International Crisis Group detailing the duties of a Trustee. The letter underlined the strictly advisory and volunteer nature of the Trustees' involvement in the International Crisis Group, noting that they did not hold any governance powers over the organisation. They were expected, while not required, to attend meetings roughly every six months and to review the overall strategic direction of the organisation. Between meetings, Trustees were invited, but not obliged, to comment on drafts of future publications in their areas of working, Trustees could also be asked, if they accepted to do so, to provide ad hoc advice, contacts, advocacy and to engage in fundraising and other substantive maters. In addition to this information, Ms Mogherini replied to the Committee's concerns about her possible involvement in funding proposals and about the protection of the confidentiality of sensitive information. She stated that, in her capacity as member of the Board of Trustees, she would not hold either any governance power or any responsibility on funding proposals. She furthermore stated that her role would not imply, under any circumstances, sharing confidential information she acquired during her mandate as High Representative and Vice-President of the Commission. She confirmed that she would continue to comply fully with the principles of discretion, integrity and independence enshrined in the Code of Conduct for the Members of the European Commission.

- 11) The Independent Ethical Committee assessed subsequently the nature of the International Crisis Group, its organisation, the scope of Ms Mogherini's position, the funding of the organisation and the legal context, and delivered its opinion on 11 May.
- The Committee considered, in overall terms, that former Members of the Commission had a right to engage in work and to pursue a freely chosen or accepted occupation after the term of their office. The Committee underlined, however, that this right needed to be balanced with the obligations set out in Article 245 Treaty on the Functioning of the European Union and in the Code of Conduct for the Members of the European Commission.
- 13) The Committee observed that, as a member of the Board of Trustees of the International Crisis Group, Ms Mogherini would attend, 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 would not involve any lobbying towards the EU institutions.
- The Committee noted that the objectives of the International Crisis Group were not for profit and aimed to achieve objectives that were widely shared, including by the European Union. The Committee underlined that Ms Mogherini's activity was not remunerated and considered that her involvement in the area of peace building and conflict mediation did not represent a risk with regard to the interests of the Commission and the European Union. The Committee also noted that Ms Mogherini's explicit assurances show that she was fully aware of her obligations under the Code of Conduct for the Members of the Commission.
- The Committee concluded that Ms Mogherini's notified activity as Member of the Board of Trustees of the International Crisis Group was compatible with Article 245 of the Treaty on the Functioning of the European Union. Nevertheless, in order to ensure full compatibility with Ms Mogherini's obligations applying after the end of the mandate, the Committee recommended that the Commission should recall a certain number of conditions deriving from Articles 339 of the Treaty on the Functioning of the European Union and from the Code of Conduct for the Members of the Commission. The Committee also recommended to the Commission to remind the need to abide by the deadlines of the procedure set out in Article 11(2) of the Code of Conduct for the Members of the Commission.
- The Commission shares the Committee's assessment and the present decision is based on the Committee's opinion. As regards the procedure set out in Article 11(2) of the Code of Conduct, the Commission underlines that any new professional activity needs to be notified to the Commission with a minimum of two months' notice before engaging in the activity.

HAS DECIDED AS FOLLOWS:

Article 1

Former High Representative / Vice President Federica Mogherini's notified activity as member of the Board of Trustees of the International Crisis Group is compatible with Article 245(2) of the Treaty on the Functioning of the European Union, subject to the following conditions:

- In line with Article 11(4) of the Code of Conduct for the Members of the Commission, during a period of two years following her term of office, Former High Representative / Vice-President Mogherini shall refrain from lobbying the Members of the Commission or the staff of the Commission or the European External Action Service on behalf of the International Crisis Group on matters for which she was responsible.
- Former High Representative / Vice-President Mogherini shall abide by the obligation of confidentiality laid down in Article 339 of the Treaty on the Functioning of the European Union, as well as by the general obligations set out in Article 11(1), in conjunction with Article 5, of the Code of Conduct for the Members of the Commission , as concerns the respect of collegiality, integrity and discretion with regard to the decisions and activities of the Commission during her term of office.

Done at Brussels, on 10 June 2020

The President Ursula von der Leyen