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# **DECISION OF THE EUROPEAN COMMISSION**

on Former Commissioner Cecilia Malmström's post term of office professional activity with the Peterson Institute for International Economics

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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 any 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(3), second subparagraph.
- 4) On 14 June 2021, Former Commissioner Cecilia Malmström informed the Commission that, since 1 June 2021, she was affiliated to the Peterson Institute for

International Economics, an American think-tank covering a broad scope of fields of interest. Ms Malmström indicated that she would be a non-resident Senior Fellow of this think-tank and that she would notably do podcasts, seminars and research. She added that the position would represent approximatively the equivalent of 40% of a full time employment. She stated that, in her view, her activity would not entail any conflict of interest with her former position as Member of the Commission in charge of Trade.

- Ms Malmström provided additional information on 23 June 2021 and indicated that she would be hosting the virtual event 'Trade Winds', once a month, at the Peterson Institute for International Economics. She added that this event was designed as a virtual seminar where people are invited to discuss trade related matters. Ms Malmström will be leading it, asking questions to invited guests from business, academia, institutions, politics etc.
- Based on the information provided by Ms Malmström and the information on the Peterson Institute's website, Ms Malmström's envisaged activity is directly connected with her former portfolio.
- Against this background, in line with Article 11(3) of the Code of Conduct for the Members of the Commission, the Independent Ethical Committee was requested, on 23 June 2021, to provide an opinion on the compatibility of Ms Malmström's envisaged activity with Article 245 of the Treaty on the Functioning of the European Union.
- 8) The Committee delivered its Opinion on 2 July 2021. The Committee examined successively the nature of the Peterson Institute for International Economics, the activities carried out by this Institute, its governance structure, its funding, its links with the European Commission and the scope of Ms Malmström's envisaged position.
- 9) The Committee noted that the Peterson Institute for International Economics is a non-profit American think-tank based in Washington and founded in 1981. It conducts research on a wide range of topics related to the United States' economy and international economics, notably in the fields of 'international trade and investment, international finance and exchange rates, macroeconomic policy and crisis response, globalization and human welfare'.
- 10) The Institute's research outcomes are made publicly available in the form of books, policy recommendations, working papers as well as articles. The Institute also holds regular online events gathering international experts, policy-makers and academics.
- 11) The Committee further noted that, according to the information published by the Peterson Institute's website, its audience includes 'government officials and legislators, business and labour leaders, management and staff at international

- organizations, university-based scholars and their students, experts at other research institutions and nongovernmental organizations, the media, and the public at large'.
- Regarding the Peterson Institute's governance structure, the Committee noted that it includes a President, the latter being responsible for the daily running of the Institute, a Board of Directors and an Executive Committee of the Board of Directors.
- 13) As regards the Institute's funding, the Committee quoted publicly available information, according to which the organisation's 2020 annual budget was USD 13 million, 'funded by donations and grants from corporations, individuals, private foundations, and public institutions, as well as income on the Institute's endowment'.
- 14) The Committee noted that the Peterson Institute for International Economics had received EU funding, namely, in 2016, a grant from the Directorate-General for Economic and Financial Affairs (ECFIN) aimed at financing a 'Study on lessons from the United States on the Functioning of the European Economic and monetary Union (EMU)'.
- The Peterson Institute for International Economics is registered in the Transparency Register of the European Parliament, the Council of the European Union and the European Commission since 6 December 2018. As from its registration, ten meetings were held with Members of the Commission, members of cabinets or Directors-General. Two of these meetings were trade-related and held with the Director-General for Trade respectively on 15 January 2021 and on 3 February 2021. The latter took place when Ms Malmström was no longer carrying out her mandate as Commissioner for Trade.
- 16) The Committee added that neither Former Commissioner Malmström nor any member of her cabinet had met with any representatives of the Peterson Institute while she was in office.
- 17) The Committee then examined the scope of Former Commissioner Malmström's envisaged activity with the Peterson Institute for International Economics and noted that it consists of serving as a non-resident senior fellow, being involved in the academic activities of the Institute. According to the information publicly available on its website, the Peterson Institute counts non-resident senior fellows, senior fellows and research fellows, participating in the Institute's activities and selected for their 'expertise to bear on a vast and diverse range of topics and regions'.
- 18) The Committee also referred to the information provided by Former Commissioner Malmström, according to which she would be 'based in Sweden' and her activities would involve 'podcasts, seminars' and 'research'.
- 19) The Committee noted in particular that Ms Malmström had informed the Commission that she would host the virtual event 'Trade Winds' once a month. The event aims at debating 'the future of global commerce in the era of the COVID-19 pandemic,

including ways that international cooperation on trade can accelerate the recovery'. Ms Malmström will be 'leading it, asking questions to invited guests from business, academia, institutions, politics, etc'.

- 20) On this basis, the Committee assessed the compatibility of the envisaged activity against the framework of the applicable legal context.
- 21) First, and in line with previous opinions, the Committee noted that the 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, yet knowing that 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.
- As regards in particular Former Commissioner Malmström's envisaged activity, the Committee recalled its scope as described above. The Committee noted that Ms Malmström would be engaged in discussions in relation to trade and economics understood in the broadest sense, which leads to the conclusion that her activity would be linked to her former position as Commissioner for Trade. The Committee nonetheless observed that Ms Malmström would only host this virtual event on a monthly basis. 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
- 23) The Committee therefore considered that there were no legal or other impediments to accept an assignment as a non-resident senior fellow at the Peterson Institute for International Economics, yet noting that a number of restrictions should be recalled by the Commission, in its decision based on Article 11(3) of the Code of Conduct for the Members of the Commission, in order to ensure the compatibility of the activity with the obligations applying after the end of the mandate and to avoid that this activity entails a risk with regard to the interests of the Commission and the European Union.
- 24) The Committee advised the Commission to recall the provisions of Article 11(4) of the Code of Conduct as regards the prohibition of lobbying the Members of the Commission or their staff on behalf of Former Commissioners' own business, that of their employer or client, on matters for which they were responsible within their own portfolio.
- 25) Furthermore, the Committee considered that there was a risk that specific information or insights that Former Commissioner Malmström obtained during her term of office would be relevant to the work of the Peterson Institute. This might concern information obtained in areas falling within her former portfolio on Trade or in other areas such as commercial and economic related files in which she was involved via her collegial responsibilities in the Commission. As a result, the Committee considered that the Commission decision should underline the provision of Article 339 of the Treaty on the Functioning of the European Union, recalling that this provision is not

- limited in time and will apply to Ms Malmström even after the end of the two years period following the end of her mandate at the European Commission.
- The Committee also considered that the Commission should underline in its decision 26) the importance for Former Commissioner Malmström 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 her 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 Malmström obtained during her mandate, be it within her portfolio responsibilities or within the College. Therefore, Ms Malmström should not exploit any insights of a confidential or sensitive nature in policy, strategy or internal processes that she obtained during her term of office in the framework of her activities for the Peterson Institute for International Economics. The Committee noted that compliance with this restriction is particularly important concerning information relating to Former Commissioner Malmström's former portfolio on Trade, which may be of interest for the Peterson Institute for International Economics.
- The Committee underlined that the information relating to Former Commissioner Malmström's activity for the Peterson Institute was publicly available prior to her notification to the Commission. The Committee considered in this respect that the Commission should include a reminder in its decision that, in accordance with Article 11(2) of the Code of Conduct, the obligation to notify an engagement in any professional post-mandate activities must take place prior to the start of such activity and with a minimum of two months' notice.
- Finally, the Committee considered 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 for the Members of the Commission.
- 29) The Committee concluded that Former Commissioner Malmström's envisaged activity for the Peterson Institute of International Economics would be compatible with Article 245 of the Treaty on the Functioning of the European Union, subject to the respect of the conditions mentioned in its Opinion.
- 30) The Commission has considered the Independent Ethical Committee's Opinion and shares its conclusions.

#### HAS DECIDED AS FOLLOWS:

# Article 1

Former Commissioner Cecilia Malmström's envisaged activity as a Senior Fellow with the Peterson Institute for International Economics is compatible with Article 245(2) of the Treaty on the Functioning of the European Union, subject to the respect, by Ms Malmström, of the general obligations which apply to former Members of the Commission under the Treaties and the Code of Conduct for the Members of the Commission and, in particular, subject to the following conditions:

- In accordance 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 Commissioner Malmström shall refrain from lobbying Members of the Commission or Commission staff on behalf of the Peterson Institute for International Economics on matters for which she was responsible during her mandate. This includes in particular the prohibition to lobby in view of obtaining funds from the European Union. Lobbying must be understood in the sense of Article 3(2) of the Interinstitutional Agreement of 20 May 2021 between the European Parliament, the Council of the European Union and the European Commission on a mandatory transparency register, which covers activities carried out with the objective of influencing the formulation or implementation of policy or legislation, or the decision-making processes of the Institutions of the European Union including inter alia: (a) organising or participating in meetings, conferences or events, as well as engaging in any similar contacts with Union institutions; (b) contributing to or participating in consultations, hearings or other similar initiatives; (c) organising communication campaigns, platforms, networks and grassroots initiatives; (d) preparing or commissioning policy and position papers, amendments, opinion polls and surveys, open letters and other communication or information material, and commissioning and carrying out research.
- In accordance with Article 339 of the Treaty on the Functioning of the European Union, Former Commissioner Malmström shall refrain from participating in any activity, any decision-making procedure or any discussion within the Peterson Institute of International Economics 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 provision is not limited in time and will apply to Ms Malmström even after the end of the two years period following the end of her mandate at 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 Malmström remains bound by the duties of collegiality and discretion with respect to the Commission's decisions and activities during her 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 Malmström obtained during her mandate, be it within her portfolio responsibilities or within the College. Ms Malmström shall not exploit any insights of a confidential or sensitive nature in policy, strategy, or internal processes that she obtained during her term of office in the framework of her activities at the Peterson Institute of International Economics. Compliance with this restriction is particularly important concerning information relating to Former Commissioner Malmström's portfolio on Trade, which may be of interest for the Peterson Institute for International Economics.

In line with Article 13(2) of the Code of Conduct for the Members of the Commission, Former Commissioner Malmström shall 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.

## Article 2

Former Commissioner Malmström should notify any future envisaged post term of office professional activity with a minimum of two months' notice in line with Article 11(2) of the Code of Conduct.

Done at Brussels, on 20 July 2021.

The President Ursula von der Leyen