Opinion

of the

Independent Ethical Committee

established

by the European Commission

11 May 2021

Subject: Request for an opinion on former Commissioner Hogan's post-term of office activities as regards his activities for the company 'Vodafone'

On request of the President of the European Commission, the Independent Ethical Committee, composed of Ms Dagmar Roth-Behrendt and Mr Heinz Zourek, delivers the present opinion:

Procedure

- 1. On 17 March 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 Phil Hogan's post-term of office activity as regards his advising activities for the company 'Vodafone', in order to ensure compliance with Article 245 of the Treaty on the Functioning of the European Union.
- 2. On 26 April 2021, Mr Allan Rosas, member of the Independent Ethical Committee, informed the Secretary-General of the Commission and the members of the Committee about his decision to recuse himself from the consultation of the two clients 'Proof of Trust' and 'Vodafone' of Mr Hogan consultancy firm 'Hogan, Strategic Advisory Services'. He referred to the fact that, one of the two clients is 'Vodafone' and that a member of his family is one of the senior managers of 'Vodafone Belgium'. He declared that neither he nor his family member have any personal interest in relation to former Commissioner Hogan providing advisory services to the 'Vodafone'. Nevertheless, his family member's position in 'Vodafone Belgium' could create a risk of perception for the committee's impartiality and independence work. Given that the 'Vadafone' and 'Proof of trust' cases were subject of a deliberation at the same time by the Committee, Mr Rosas consequently participated neither in the deliberations on these files nor in the adoption of the present opinion.

- 3. On 4 May 2021, the Committee delivered an opinion on the compatibility of former Commissioner Phil Hogan's post-term of office activity as regards his consultancy company 'Hogan, Strategic Advisory Services', in order to ensure compliance with Article 245 of the Treaty on the Functioning of the European Union.
- 4. The Committee has taken good note that the company 'Vodafone' will be a client of the consultancy company of former Commissioner Hogan, 'Hogan, Strategic Advisory Services'. In this context, this opinion should be read in conjunction with the opinion of the Committee on Mr Hogan consultancy company 'Hogan, Strategic Advisory Services' delivered on 4 May 2021. Therefore, the conditions and restrictions issued in this opinion will supplement those of the opinion of 4 May 2021.

Facts

General information

- 5. On 1 February 2020, former Commissioner Hogan informed the Commission that he has the intention to carry out consultancy projects for the company 'Vodafone'.
- 6. Vodafone Group plc is a British multinational telecommunications company. Its registered office and global headquarters are in the United Kingdom. It is one of the largest telephone company in the world which has an expertise in different fields such as mobile communications, fixed communications, internet, 5G, cloud and security and cyber security.
- 7. 'Vodafone' provides a range of telecommunications services, notably call, text, and data access, as well as fixed line services, including broadband and television. The company also offers Internet of Things (IoT)¹, public and private cloud services, cloud-based applications, and products for securing networks and devices.
- 8. 'Vodafone' has partnership agreements with local operators in 48 countries; is among the top 5 internet providers globally and one of the largest operators of submarine cables (internet partnership with 74 countries) and is present in 168 countries with 4G roaming.
- 9. 'Vodafone' is composed of various governance entities whose main ones are the Board of Directors', the Chairman of the Board of Directors, the Chief Executive and the Executive committee.

Funding

- 10. According to publicly available information, 'Vodafone' revenues come mainly from sales of products and services, operating income and financial income.
- 11. According to the Financial Transparency System of the European Commission, 'Vodafone' received funding from the EU budget over the last years. In total, between 2007 and 2019, 111 budgetary commitments were made for a total amount

¹ The Internet of Things (IoT) is a name for the aggregate collection of network-enabled devices, excluding traditional computers like laptops and servers. Types of network connections can include Wi-Fi connections and Bluetooth connections.

of €64,8 million. None of these commitments was made by DG AGRI or DG TRADE which were services placed under the authority of former Commissioner Hogan. These Commitments were mainly made by DG CONECT (€41,7 million), the Innovation and Networks Executive Agency (€16,58 million), the Research Executive Agency (€3,44 million), DG JRC (€1,46 million) and DG COM (€0,82 million).

12. Former Commissioner Hogan declared in his notification to the Commission that he has 'not been involved in any negotiations or financial disbursements to the company Vodafone.'

Links of 'Vodafone' with the European Commission

- 13. 'Vodafone Belgium' is registered in the Joint Transparency Register of the European Parliament and the Commission since 2010. According to the register, Vodafone met with representatives from the European Commission 129 times since December 2014. 'Vodafone' met the Director-General of DG TRADE, to discuss 'Chinese tech companies' (February 2019) and 'Recent developments in digital trades' (July 2018). 'Vodafone' also met with a Member of the Malmström's Cabinet to discuss 'updates on trade and investment screening' (February 2019) and a Member of the Hogan's Cabinet when the latter was Commissioner for TRADE to discuss about a Chinese 5G supplier (February 2020).
- 14. Former Commissioner Hogan indicated in his notification to the European Commission that he never met with any representative of 'Vodafone' during his mandate.

'Former Commissioner Hogan's position

- 15. Former Commissioner Hogan mentioned in his notification that 'Vodafone' 'has indicated its intention to seek advisory supports'. Mr Hogan also indicated that he 'will not involve any role in the day-to-day operations of Vodafone or any lobbying activity. The external advice will be performed on a routine basis e.g. monthly.'
- 16. The advisory work of Mr Hogan for 'Vodafone' will be carry out thanks to his consultancy company 'Hogan, Strategic Advisory Services'.
- 17. Finally, former Commissioner Hogan specified that he 'will be mindful of the compliance requirements of the Code of Conduct for Commissioners under article 245 of TFEU and the need to respect confidentiality on all matters relating to (his) mandates'. He has undertaken to 'not engage with any activities on behalf of (his consulting company) that involves agriculture or any matter relating to (his) 9 months term of office as Commissioner for Trade.'

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, which develops these obligations in more detail.
- 25. The balance must be proportionate. It can be achieved by imposing restrictions and conditions on a new professional activity where those restrictions and conditions are more proportionate than a simple prohibition or authorisation.
- 26. The Code of Conduct provides the framework in which the Commission has to establish this balance between the rights and obligations of its Members with regard to concrete, new activities. This balance cannot be established based on an automatic scheme and requires a case-by-case approach, which takes into account the context and particularities of each individual case.
- 27. In the present case, the Commission seeks an opinion on the restrictions and conditions which should apply to the activities notified by former Commissioner Hogan as regards his consultancy for 'Vodafone'.

- 28. Mr Hogan will advise 'Vodafone' through his consultancy company which proposes 'high-level external advice' and an expertise 'regarding strategic issues' while indicating that he would not be involved in the 'day-to-day operations of Vodafone or (in) any lobbying activity'.
- 29. The Committee considers it important to establish the context in which the company 'Vodafone' operates and interacts with the European Commission.
- 30. In this regard, the Committee notes that 'Vodafone' has regular meetings with Commission representatives while noting that no meeting was held with former Commissioner Hogan. Since December 2010, 129 meetings are mentioned in the Joint Transparency Register of the European Parliament and the Commission. These meetings touched mainly upon the digital single market and the telecommunication policy. None of them related to agriculture policy; nevertheless, very few meetings were about trade policy.
- 31. Moreover, 'Vodafone' has listed several significant fields of interests in its entry in the Joint Transparency Register of the European Parliament and the Commission. The company 'Vodafone' topics of interests are as follows: climate action, competition, consumers, culture and media, education and training, energy, environment, institutional affairs, justice and fundamental rights, public health, single market, taxation, trade and transport. The Committee notes that one of the topics, namely trade, is linked to Mr Hogan former portfolio.
- 32. Finally, the Committee notes that 'Vodafone' was the recipient of funding from the European Union budget over the last years. However, none of these financial commitments was made by DG AGRI or DG TRADE under the mandates of former Commissioner Hogan. The latter also indicated that he has 'not been involved in any negotiations or financial disbursements to the company 'Vodafone'.
- 33. The committee notes that it emerges from the foregoing points that the company 'Vodafone' is interested in the working methods and decision-making processes of the European institutions as well as inside information in its areas of interest. This situation could represent a serious risk with regard to the interests of the Commission and the European Union.
- 34. Given this risk, the committee considers crucial to recall the commitments made by former Commissioner Hogan to respect his general duties of integrity and discretion in his professional relationship with the company 'Vodafone'.
- 35. In his notification, Mr Hogan stated that he 'will be mindful of the compliance requirements of the Code of Conduct for Commissioners under article 245 of TFEU and the need to respect confidentiality on all matters relating to (his) mandates'. He has undertaken to 'not engage with any activities on behalf of (his consulting company) that involves agriculture or any matter relating to (his) 9 months term of office as Commissioner for Trade.' The Committee takes note that Mr Hogan guaranteed that he would not share confidential information gained during his term of

- office. The Committee takes also note that Mr Hogan guaranteed he would be able to pursue this activity without engaging in lobbying activities for 'Vodafone' towards the European Commission.
- 36. However, the role of consultant, through its element of 'providing high-level external advice', may constitute by its nature a risk that specific information or insights that former Commissioner Hogan obtained during his mandate could be relevant to the work of the 'Vodafone'. In that respect, the Committee recommends that the European Commission's decision should emphasise former Commissioner Hogan commitment to respect the obligations set out in the Treaty and in the Code of Conduct and not to share any sensitive information acquired during his term of office.
- 37. Hence, the Committee recommends that the Commission should recall and explicitly spell out in its decision a number of relevant provisions and restrictions in order to ensure the compatibility of the activity with the obligations applying after the end of the mandate.
- 38. The Commission decision should first recall the importance to be aware of all the obligations as former Member of the Commission and emphasise the need to have an extremely prudent approach when carrying out advisory work to the company 'Vodafone'.
- 39. In this regard, the Commission decision should explicitly recall 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. Hence, the Commission decision should clarify that this provision is not limited in time and will apply to Mr Hogan even after the end of the two years period following the end of his mandate at the European Commission.
- 40. Moreover, the Commission decision should underline the importance for Mr Hogan 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 Hogan 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 Hogan obtained during his mandate, be it within his portfolio responsibilities for Agriculture and Rural development and 'Trade' or within the College. Therefore, Mr Hogan should not exploit any insights of a confidential or sensitive nature in policy, strategy or internal processes that he obtained during his term of office for the benefit of 'Vodafone'.
- 41. The Committee notes that 'Vodafone' has a core interested in the European Union digital agenda but also in the other domains of EU affairs such as international trade,

- which are topics directly linked to Mr Hogan former portfolio when he was a member of the European Commission.
- 42. Therefore, the Committee strongly 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 for a period of two years after ceasing to hold office'. 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.
- 43. As such, former Commissioner Hogan must not perform such lobbying activities towards the Commission, i.e. the Members of the current Commission and the staff of the Commission for a duration of two years after the end of his term of office, i.e. until 26 August 2022. The Committee considers that former Commissioner Hogan should not contact for 'Vodafone' the services previously under his portfolio. This affects namely the Directorate-General for Agriculture and Rural Development and the Directorate-General for Trade.
- 44. Similarly, the general duties of integrity and discretion prevent former Commissioner Hogan to advise 'Vodafone' on how to lobby and to exert influence on the Members of the current Commission and the staff of the Commission for the benefit of specific and individual interests of this company thanks to his knowledge of the functioning of the Commission and of the privileged information available to him during his mandate. In addition, former Commissioner Hogan should not advise 'Vodafone' on matters related to agriculture and rural development and international trade.
- 45. Furthermore, the Committee recalls that, as the provisions of the Treaties are not limited in time, the general duties of integrity and discretion established by Article 245 TFEU continue to apply even after two years. The Commission should therefore recall in its decision that these duties continue to apply to any possible contacts with the European Commission and its staff on behalf of the 'Vodafone', even if Article 11(4) of the Code of Conduct does not apply anymore.

- 46. 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.
- 47. Therefore, based on the above-mentioned information and considerations, the Committee concludes that the envisaged activity would be compatible with Article 245 TFEU, subject to the full and strict respect of the above-mentioned commitments and the conditions specified in this opinion.

Dagmar Roth-Behrendt

Heinz Zourek