

Opinion
of the
Independent Ethical Committee
established
by the European Commission
17 June 2019

Subject: Request for an opinion on the application of Vice-President Katainen for the position of President of the Finnish Innovation Fund SITRA

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

Procedure

1. On 29 May 2019, the Committee was asked by the Secretary-General of the Commission, on behalf of the President of the Commission, to deliver an opinion on two questions:
 - 1) What are the appropriate measures that should be put in place to prevent, or address, a conflict of interest during SITRA's application procedure or afterwards, in case the Vice-President is selected?
 - 2) Would the new activity be compatible with Article 245 of the Treaty on the Functioning of the European Union?
2. The Committee deliberated on the issue on 6 June 2019.

Facts

The application of Vice-President Katainen

3. On 25 May 2019, Vice-President Katainen informed the President of the Commission that he intended to apply for the position of President of the Finnish Innovation Fund SITRA. The post is vacant as of 1 January 2020. The final date for applications was 27 May 2019. The names of the 51 applicants have subsequently been published on SITRA's website.

SITRA

4. According to information provided by the Fund on its website and its annual report and financial statement, SITRA is a Finnish Innovation Fund, which was established by law. It is an independent public foundation, which operates under the direct supervision of the Finnish Parliament.
5. It functions as a think tank and driver of innovation in the public debate but also as a fund investing its capital in order to finance its operations and to support change. Accountants appointed by the national Parliament audit both the administration and the accounts of SITRA.
6. The Bank of Finland and the Finnish Parliament gave SITRA an endowment capital to yield profits through responsible investment in order to finance the work at SITRA. In addition to investment activities involving the endowment capital, SITRA invests in venture capital funds and directly into a limited number of 'early stage companies' to promote Finland's competitiveness and business activities aimed at sustainable well-being.
7. At the end of 2018, the market value of SITRA's endowment capital was EUR 776m (end of 2017: EUR 840m).
8. The total allocation of SITRA's endowment capital consisted of shares (49%), fixed income instruments (37%) and other investments (14%). The yield from invested assets was +7.7% in 2017 and -3.9% in 2018. SITRA's annual budget is EUR 30 – 40m. SITRA has approximately 160 employees appointed by the President of SITRA.
9. SITRA is registered in the Joint Transparency Register of the European Commission and the European Parliament under the section 'VI - Organisations representing local, regional and municipal authorities, other public or mixed entities, etc.' and more precisely 'Other public or mixed entities, created by law whose purpose is to act in the public interest'.

SITRA's objectives

10. SITRA aims 'to promote stable and balanced development in Finland, qualitative and quantitative economic growth and international competitiveness and cooperation', by means of supporting 'projects that increase the efficiency of the economy, improve the level of education or research, or study future development scenarios'.

11. SITRA's vision consists of 'building the Finland of tomorrow in a world that is defined by the earth's natural limits, a new phase in geopolitics and the rapid development of technology'. It builds on 'the Nordic values and ideals such as freedom, trust, equality and fairness', sees the 'Finland of the future' as 'based on a fair and competitive circular economy – a society that functions within the planetary boundaries and is therefore also secured for future generations' and considers technology, internationalisation and lifelong learning as a benefit for everyone.
12. Administration and leadership are seen 'as an active and vital accelerator of progress, which lays a foundation for a constructive societal debate'. The vision is split into different themes and functions: 'Future-oriented work is carried out in the themes of Carbon-neutral circular economy, the Capacity for renewal and the New working life and a sustainable economy and in the functions related to foresight and insight and the Societal training functions'.
13. 'SITRA carries out practical experiments, compiles cross-boundary networks and develops and finances business operations. It invests its assets responsibly aiming at a profit. For SITRA, responsible investing means taking account not only of the return and risk but also of the environmental, social and governance factors when making investment decisions.'
14. The endowment capital is mainly invested in funds. SITRA makes the decisions on the allocations, but the funds decide on the individual investment targets independently, as per the fund's rules. SITRA also invests in venture capital funds, and seeks a social impact as well as returns, but its activities are market-based, i.e. investment transactions are conducted in compliance with the same investment principles as those that govern all other investors.
15. An overview on its investments is available in SITRA's Annual Report and Financial Statements 2018, pages 47 to 51, which is publicly available.

The function of President of SITRA and SITRA's internal structure

16. The function of President is remunerated and is the highest management function in the organisation.
17. The core of SITRA's administration consists of the Supervisory Board, the Board of Directors (the Board) and the President who is also a member of the Board.
18. The President oversees the operations, manages the administration of the fund and develops its operations, in line with the instructions and stipulations provided by the Supervisory Board and the Board. Measures and decisions of an extraordinary qualitative or quantitative nature must be referred to the Board.

19. SITRA's Supervisory Board consists exclusively of members of the Finnish Parliament, supported by a secretary to the Supervisory Board. The Supervisory Board monitors SITRA's management and makes decisions on operational principles.
20. The Board of Directors prepares and presents the matters to be decided by the Supervisory Board and is responsible for the general management of the fund. It consists of six members. The members are currently the Permanent Secretary of the Ministry of Finance, the Permanent Secretary of the Ministry of Economic Affairs and Employment, the Permanent Secretary of the Ministry of Education and Culture, a University Professor, SITRA's President and another person with various public and private functions. A secretary supports the Board.

Legal context

21. Article 17(3), third subparagraph, of the Treaty on European Union (TEU) provides that:

In carrying out its responsibilities, the Commission shall be completely independent. Without prejudice to Article 18(2), the members of the Commission shall neither seek nor take instructions from any Government or other institution, body, office or entity. They shall refrain from any action incompatible with their duties or the performance of their tasks.

22. 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.

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(6) and (7) of the Code of Conduct for the Members of the European Commission provides:

6. Members shall avoid any situation which may give rise to a conflict of interest or which may reasonably be perceived as such. A conflict of interest arises where a personal interest may influence the independent performance of their duties. Personal interests include, but are not limited to, any potential benefit or advantage to Members themselves, their spouses, partners (9) or direct family members. A conflict of interest does not exist where a Member is only concerned as a member of the general public or of a broad class of persons.

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 4 of the Code of Conduct provides:

1. Members shall recuse themselves from any decision or instruction of a file and from any participation in a discussion, debate or vote in relation to a matter that falls under Article 2(6).

2. Declarations submitted under Article 3 shall be scrutinised under the authority of the President.

3. Members shall inform the President of any situation that falls under Article 2(6) as soon as they become aware of it.

4. The President shall take any measure he considers appropriate, in the light of the information referred to in paragraphs (2) and (3) or other available information, if necessary after consultation of the Independent Ethical Committee, such as:

(a) the reallocation of a file to another Member or to the responsible Vice-President. The President shall inform the President of the European Parliament in due time of any such reallocation;

- (b) *the request for the sale or placing in a blind trust of the financial interests referred to in Article 3(4)(a) where these give rise to a conflict of interest in the area of the Member's portfolio responsibilities.*

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 (17) 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

First question

'What are the appropriate measures that should be put in place to prevent, or address, a conflict of interest during SITRA's application procedure or afterwards, in case the Vice-President is selected?'

27. The Committee notes that the responsibilities of the Vice-President in charge of jobs, growth, investment and competitiveness as defined in his mission letter are very broad and relate to most of the activities of SITRA.

28. The mere fact that SITRA's purposes and activities are related to the portfolio responsibilities does however not lead to a conflict of interest as such. A conflict of interest requires a situation where a personal interest actually or potentially influences the independent performance of the duties or can be reasonably perceived as such. This requires a situation, which provides a clear personal advantage or disadvantage for the Vice-President.

29. As one of in total 51 applicants, the Vice-President will necessarily have to convince the Supervisory Board as the relevant decision-making body that he is the best candidate among those 51 applicants to pursue and implement SITRA's objectives.
30. Another element to be taken into consideration is that SITRA's and its President's operational possibilities depend to a large extent on the success of SITRA's investments.
31. Consequently, the Vice-President needs to avoid any situation, which actually or potentially provides him an advantage in the selection procedure or could be reasonably perceived as such. This applies to situations, which have or could have a direct impact on current investments of SITRA or could be reasonably perceived as such.
32. Given the wide overlap of issues to be dealt with in both functions, the Committee considered a possible reallocation of the Vice-President's portfolio or parts thereof by the President. Yet, this seemed disproportionate given that specific areas can be identified where the Vice-President should not participate in the Commission's activities or where he should show particular caution and restraint.
33. As Vice-President, he can continue to participate in general policy discussions, also in areas, which are relevant for SITRA's activities and investments. It should however be **transparent for the other Members of the Commission** that the Vice-President has applied for a position with SITRA and that the general policy issues under discussion are linked to SITRA's activities.
34. In his coordinating responsibility for the Project Team, the Vice-President should not fix the agenda of meetings, chair meetings or draw the conclusions of meetings when the topics have, could have, or could be perceived to have, a direct link with SITRA's activities and the Vice-President's possible future responsibilities. This is the case when such meetings aim at shaping or designing the future innovation policies in the European Union, or concern specific markets or areas which are in the thematic or geographic focus of SITRA's activities. The work on the European Union's industrial policy mentioned by the President of the Commission falls within this category. In such specific situations, the Commission or its President should **delegate the coordinating role temporarily** to another Member.
35. The Vice-President has no individual responsibility for specific financial or budgetary decisions of the Commission. In his general oversight role as Member of the College and with regard to his political responsibilities, he should **not involve himself actively in any financial or budgetary decisions** of the Commission as a College or the Directorates-General, which could be perceived as impacting investments of SITRA. This is in particular, but not only, relevant for the Vice-President's responsibilities with regard to the European Fund for Strategic Investments (EFSI) as well as the European Investment Advisory Hub and the European Investment Project Portal in the framework of the Investment Plan for Europe. This should be explicitly clarified between the Commission and the Vice-President.

36. He should demonstrate a high degree of restraint with regard to his interactions with the **European Investment Bank** and the **European Investment Fund**, and the exercise of his responsibilities as representative of the European Union in the **Board of Governors of the European Bank for Reconstruction and Development**. The Vice-President cannot influence or participate in any decision on investments or investment policies, which would have a direct impact on sectors, companies or projects in which SITRA is involved either directly or via its investments in specific funds. SITRA's annual report and financial statement for 2018 provides an overview and guidance in this regard. This should be explicitly clarified between the Commission and the Vice-President.
37. Were the Vice-President to be selected, he may only accept the nomination after the Commission has established the compatibility of the function in question with Article 245 TFEU according to the procedure provided for by Article 11(3) of the Code of Conduct. The nomination may only enter into force after the Vice-President has left the Commission.
38. The Committee concludes that the situation resulting from the Vice-President's application requires the adoption of the above-mentioned measures and clarifications, covering both the period of the selection procedure and afterwards in case of being selected, in addition to the Vice-President's general obligations set out in Articles 2(6) and 4(1) and (3) of the Code of Conduct.

Second question

'Would the new activity be compatible with Article 245 of the Treaty on the Functioning of the European Union?'

39. 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 17(3) TEU, Article 245 TFEU and the Code of Conduct, which develops these obligations in more detail.
40. The activity for which the Vice-President applied is a gainful professional activity, which falls under the obligation of Article 11(2) of the Code of Conduct to inform the Commission.
41. The exception to this obligation set out in Article 11(6) of the Code of Conduct for public office does not apply. As an exception, which needs to be interpreted in a narrow manner, the Committee considers it to refer only to functions of a constitutional nature to which a former Member is elected.
42. SITRA is a public body of a Member State of the European Union. It has been established by law and is under close public supervision by the Finnish Parliament. It pursues objectives of general interest, which are largely in line with objectives of the European Union and the Commission.
43. The Committee does therefore not see any legal or ethical impediments to accepting the function of President of this body after the term of office.

44. However, a number of restrictions should be recalled or explicitly set out in order to avoid any undue influence on the decision-making of the Commission and to exclude that market operators which are or could be affected by SITRA's investment projects or decisions have a benefit or disadvantage from the Vice-President's responsibilities or status as former Member of the Commission.
45. The general interdiction of Article 11(4) of the Code of Conduct to lobby Members of the Commission or their staff on behalf of SITRA for a period of two years after ceasing to hold office applies. This should be explicitly recalled by the Commission.
46. Given the Vice-President's close relations with the European Investment Bank and the European Investment Fund in the framework of his portfolio responsibilities, this interdiction should be extended to any form of lobbying of these two bodies on investment decisions. Since the Vice-President represented the European Union in the Board of Governors of the European Bank for Reconstruction and Development, the interdiction should also cover this financial institution.
47. The interdiction to lobby does not affect encounters at public events or general exchanges of and on publicly available information.
48. It should also be recalled 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.
49. Moreover, in line with this Treaty provision and Article 11(1), second sentence of the Code of Conduct, the Vice-President should not use any internal information or insights acquired during the mandate for specific investment decisions of SITRA, including divestments.
50. The Committee concludes that the envisaged activity would be compatible with Article 245 TFEU under the above-mentioned conditions.

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