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**DECISION OF THE EUROPEAN COMMISSION**

**on Former Commissioner Vytenis Andriukaitis' post term of office activity as Co-Founder and Partner of the 'European Institute for Health and Sustainable Development'**

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.
- 3) 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 paragraph 3, second subparagraph, litt. (a) to (f).
- 4) On 8 July 2020, Former Commissioner Vytenis Andriukaitis notified to the Commission his envisaged post term of office involvement as co-founder and partner of a think-tank named 'European Institute for Health and Sustainable Development' (hereafter: EIHSD). He added information on the other co-founders of this think-tank, namely two individuals and one institutional partner, the *Sveikatos Ekonomikos Centras* (Health Economic Center). The latter was presented as a specialised centre for research and consultancy as well as for vocational training, at Lithuanian and international level, in health and social economics. The information contained on the Health Economic Center covered its main outcomes, recent projects carried out as well as its publications.
- 5) The Commission noted that the notification was linked to Former Commissioner Andriukaitis' former portfolio of Health and Food Safety. Therefore, in line with Article 11(3) of the Code of Conduct for the Members of the Commission, the

Commission requested, on 23 July 2020, the Independent Ethical Committee's opinion on its compatibility with Article 245 of the Treaty on the Functioning of the European Union. The Committee was composed of two members given that the third member recused herself from the file for the reasons mentioned in the opinion.

- 6) The Committee examined Mr Andriukaitis's notification and wrote to the Commission, on 31 July 2020, requesting additional information on the envisaged activity and more precisely on: Mr Andriukaitis' specific position, function and tasks in the EIHSD (besides being its founder); on whether the activity would be remunerated; on how the EIHSD would be financed; on what would be the main types of activity that the EIHSD would carry out; on whether the EIHSD would carry out activities towards the EU institutions, such as interest representation, bidding for EU-funded projects or services, etc.; on whether it would provide expertise, advice or other services to other entities, and if so, what would be the nature (commercial / non-commercial) of those clients, and what are the areas in which those clients are active; and whether it would work in partnership with, or form part of a network, with other entities.
- 7) Mr Andriukaitis provided the requested information on 12 August 2020 and the Committee delivered its opinion on 18 September 2020.
- 8) The Committee analysed the nature of the EIHSD, its organisation, the Former Commissioner's position, the EIHSD's expected funding as well as its the links with the European Commission.
- 9) On the nature of the EIHSD, the Committee noted that it is a not-for-profit organisation, co-founded in 2020 as a legal entity of limited civil responsibility, registered in Vilnius, Lithuania. According to information provided by Former Commissioner Andriukaitis, the organisation will operate as a think-tank, but is not yet functional and has not yet started its activities due to administrative issues.
- 10) The Committee furthermore noted that the goals and objectives of the organisation, as enshrined in the statutes of the EIHSD, are listed as follows: (1) preservation of cultural heritage, (2) minorities' rights protection and integration, (3) development of the national, civil and cultural identity, (4) national security and defence, (5) non-formal education, (6) support for non-governmental organisations, (7) integration of socially vulnerable groups, (8) civic education, (9) professional development, (10) organisation and stimulation of voluntary work, (11) social protection, (12) social support, (13) prevention of natural disasters, (14) international cooperation, (15) protection of consumers' rights, (16) development of local communities, (17) protection of human and civil rights.
- 11) The Committee underlined that, in order to achieve these objectives, the EIHSD will operate in the areas of "research and application of social science and humanities". According to the information provided by Former Commissioner Andriukaitis, non-commercial institutions in the health, environment and social sectors as well as public authorities on national, regional and local levels are the target groups of the future operations of the EIHSD. Advice or other services to commercial entities are not foreseen among the activities included in the founding act establishing the EIHSD and would not be provided.
- 12) On the organisation of the EIHSD, and according to its statutes, the Committee noted that the EIHSD is composed of two main governance bodies: the General

Assembly of Partners and the Head of the Organisation, whose functions are set out in more detail in the Committee's opinion. The General Assembly of Partners is the 'supreme managing body' and notably in charge of appointing and dismissing the Head of the Organisation. When voting at the General Assembly, each partner has one vote.

- 13) As regards Mr Andriukaitis' position with the EIHSO, the Committee noted that the Former Commissioner is currently a partner of the organisation. He clarified that he would notify the Commission with a minimum of two months before starting to perform any activities for the EIHSO if he received a proposal from the EIHSO to perform certain contractual activities.
- 14) On the funding of the IHSO, the Committee noted that, according to the statutes, the EIHSO is financed by the partners and can receive: fees for services and contract work; special purpose allocations from state and municipal budgets; allocations from the Lithuania Fund and foreign funds; funds from charity, sponsorship, gifts, and inheritance; or other legally acquired funds. The Committee underlined Mr Andriukaitis' commitment that, during his cooling off period, the EIHSO would refrain from bidding for EU-funded projects.
- 15) Finally, as regards the links between, the EIHSO and the European Commission, the Committee noted that neither the EIHSO nor the Health Economic Centre are registered in the Joint Transparency Register of the European Parliament and the Commission. Moreover, according to information available on the Commission's Financial Transparency System, there are no direct links to the Union budget. The Committee finally noted Former Commissioner Andriukaitis's statement that interest representation towards EU institutions was not foreseen by the EIHSO's founding documents.
- 16) On the basis of the facts established, the Committee assessed the compatibility of Former Commissioner Andriukaitis' notified position against the framework of the applicable legal context.
- 17) First, and in line with previous opinions, the Committee recalled 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, while this right needed to be balanced with the obligations set out in Article 245 of the Treaty on the Functioning of the European Union and in the Code of Conduct for the Members of the European Commission.
- 18) Concerning Mr Andriukaitis' specific position, the Committee underlined that, as a partner of the EIHSO, his position would entail participating in the General Assembly of Partners and ensuring the development of the new organisation. Moreover, based on the available information, the Committee considered that the goals and objectives of the organisation, as enshrined in the statutes of the EIHSO do not represent a risk with regard to the interests of the Commission and the European Union.
- 19) Consequently, the Committee did not see any particular risk of incompatibility with Article 245 TFEU as long as former Commissioner Andriukaitis would respect the general obligations that apply to former Members of the Commission and subject to certain conditions.

- 20) In this regard, the Committee considered that the Commission 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. Should any activity of the EIHSD be related to such protected information, and should the Commissioner be involved in this activity, he should recuse himself therefrom.
- 21) The Committee also noted that former Commissioner Andriukaitis had explicitly confirmed that the EIHSD would refrain from bidding for EU-funded projects during his cooling off period and that “interest representation is not foreseen by founding documents”. The Committee recommended that the Commission should reflect this commitment and recall 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 EIHSD on matters for which former Commissioner Andriukaitis was responsible, for a period of two years after ceasing to hold office. This would also apply in relation to any possible activity of the EIHSD with regard to obtaining EU funding.
- 22) The Committee also considered that the Commission decision should 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' 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.
- 23) The Committee noted that Former Commissioner Andriukaitis declared that he currently had no professional activities in the EIHSD and that he committed to notifying the Commission in case he would receive a proposal from the EIHSD to perform contractual tasks. In this regard, the Committee considered that the Commission decision should include a reminder regarding the obligation to notify post-mandate activities, whether gainful or not, in accordance with Article 11(2) of the Code of Conduct.
- 24) The Committee concluded, based on the information currently available and the considerations set out above, that Former Commissioner Andriukaitis' envisaged position within the EIHSD would be compatible with Article 245 TFEU on the condition that the above-mentioned obligations and commitments are set out in the Commission's decision.
- 25) The Commission has considered the Independent Ethical Committee's opinion and shares its conclusions.

HAS DECIDED AS FOLLOWS:

*Article 1*

Former Commissioner Vytenis Andriukaitis' envisaged position as Co-Founder and Partner of the 'European Institute for Health and Sustainable Development' is compatible with Article 245(2) of the Treaty on the Functioning of the European Union, subject to the respect, by Mr Andriukaitis, of the general obligations which apply to the former Members of the Commission and, in particular, subject to the following conditions and restrictions:

- In line with Article 11(1), in conjunction with Article 5, of the Code of Conduct for the Members of the Commission, Former Commissioner Andriukaitis remains bound by the duties of collegiality and discretion with respect to the Commission's decisions and activities during his 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 he has obtained during his mandate, be it within his portfolio responsibilities or within the College;
- In accordance with Article 11(4) of the Code of Conduct for the Members of the Commission, during a period of two years following his term of office, Former Commissioner Andriukaitis shall refrain from lobbying the Members of the Commission or Commission staff on behalf of the 'European Institute for Health and Sustainable Development' on matters for which he was responsible during his mandate. In particular, Mr Andriukaitis shall ensure in line with his commitment that the 'European Institute for Health and Sustainable Development' will refrain from bidding for EU-funded projects during his cooling-off period and will not engage in interest representation towards the EU institutions.
- In accordance with Article 339 of the Treaty on the Functioning of the European Union, Former Commissioner Andriukaitis shall refrain from participating in any activity or decision-making procedure within the 'European Institute for Health and Sustainable Development' 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. Should any issue be brought to the General Assembly of Partners involving the use of such protected information, Mr Andriukaitis should recuse himself from participating in the corresponding deliberations and decision-making.

*Article 2*

In line with Article 11(2) of the Code of Conduct for the Members of the European Commission, Former Commissioner Andriukaitis shall notify any envisaged post term of office professional activities, whether gainful or not. This obligation encompasses any additional involvement from Mr Andriukaitis with the 'European Institute for Health and Sustainable Development', and notably any proposal from the 'European Institute for Health and Sustainable Development' to perform contractual tasks for the Institute.

Done at Brussels, on 28 October 2020.

*The President*  
*Ursula von der Leyen*