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**DECISION OF THE EUROPEAN COMMISSION**

**on Former Commissioner Karmenu Vella's post term of office professional activity as  
advisor for the 'Malta Enterprise' corporation**

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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.
- 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 3 September 2021, Former Commissioner Karmenu Vella notified his intention to accept the position of advisor for the ‘Malta Enterprise’ corporation. Created in 2003, ‘Malta Enterprise’ is a governmental agency based in Malta. Its main function is to promote investments and to support the expansion of industries in the country. Such activities target various sectors of the Maltese economy, including the maritime and fisheries sector. This sector constitutes an important part of Malta’s economy and growth strategy and is linked with Mr Vella’s former Commission portfolio. Against this background, and notwithstanding the similarity to the exception foreseen by Article 11(3), second subparagraph, lit. (b) of the Code of Conduct for the Members of the Commission, the Independent Ethical Committee was consulted, on 8 September 2021, on the compatibility of Mr Vella’s envisaged activity with Article 245 of the Treaty on the Functioning of the European Union.
- 5) The Committee delivered its opinion on 22 September 2021. The Committee analysed the nature of ‘Malta Enterprise’, namely its function and its link with the Maltese Government, its funding, its governing structure, its links with the European Commission and Former Commissioner Vella’s expected position.
- 6) The Committee noted that ‘Malta Enterprise’ is a governmental agency located in Pietà, Malta. It also has three overseas offices respectively based in China, Dubai and the United Kingdom. It has been created in 2003, under the ‘Malta Enterprise Act’, and became operational in January 2004. It combines the functions of three former different government agencies into a single entity: the Malta Development Corporation, the Malta External Trade Corporation and the Institute for the Promotion of Small Enterprise. In his notification to the European Commission, Former Commissioner Vella confirmed that the corporation is ‘Malta’s economic development agency.’
- 7) ‘Malta Enterprise’ aims at promoting enterprise and related business undertakings in Malta, notably by promoting investments and supporting the expansion of industries in Malta. It is subject to regulations by the Maltese ministry in charge of Economy and Industry. ‘Malta Enterprise’‘s capital is held entirely by the Maltese Government.
- 8) ‘Malta Enterprise’ supports enterprises engaged in manufacturing, information and communication technologies (ICT), development activities, call centers, healthcare, pharmaceuticals, biotechnology, aviation and maritime services, education and training and logistics’. To this aim, it can notably grant loans and advance to undertakings, acquire, sell or otherwise dispose of or lease land, plant, machinery or equipment, as well as manage, develop and carry out works on land.
- 9) The Committee furthermore noted that ‘Malta Enterprise’ also acts as an adviser to the government on economic policy and is the national contact point for the ‘Enterprise Europe Network’, through which companies based in Malta can develop links with counterparts in over 60 other countries. To this aim, the corporation cooperates on a regular basis with governmental bodies as well as with the private sector.

- 10) 'Malta Enterprise''s governance structure includes a Chairman, a Deputy Chairman and a Board of Directors appointed by the Minister for Economy and Industry. The Board of Directors is composed of 8 Members. Moreover, a Chief Executive Officer, appointed by the Board, is responsible for the daily management of the corporation and a senior management team deals with the delivery of the organisation's services.
- 11) The Committee noted that, according to the Financial Transparency System of the European Commission, 'Malta Enterprise' did not receive EU funds directly administered by the Commission departments, its staff in the EU delegations, through executive agencies or of the European Development Fund. The Committee also noted that 'Malta Enterprise' is not registered in the Transparency Register of the European Parliament, the Council of the European Union and the European Commission.
- 12) The Committee examined Former Commissioner Vella's envisaged position within 'Malta Enterprise'. The Committee noted that Mr Vella's activity will consist of serving as an advisor for 'Malta Enterprise'. In this respect, and knowing that 'Malta Enterprise' is inter alia tasked to promote investments and to support the expansion of industries in the field of maritime services, the Former Commissioner may be expected to provide advice related to his former portfolio on Environment, Maritime Affairs and Fisheries. This link with the Former Commissioner's portfolio is all the more relevant when noting that, in accordance with the information published on the corporation's website, Malta hosts 'the third largest transshipment hub in the Mediterranean', as well as a 'vibrant commercial harbour'. This corresponds to Malta's geographical characteristics which make fisheries and maritime affairs a very important aspect of the Maltese economy.
- 13) On the basis of these established facts, the Committee assessed the compatibility of Former Commissioner Vella's envisaged activity for 'Malta Enterprise' against the framework of the applicable legal context.
- 14) First, and in line with previous opinions, the Committee recalled that former 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, while this right needs 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.
- 15) Concerning Mr Vella's envisaged activity, the Committee underlined that Mr Vella may be in the position to provide advice related to his former portfolio as Commissioner for Environment, Maritime Affairs and Fisheries. The Committee considered nevertheless that this does not represent a risk with regard to the interests of the Commission and the European Union, considering in particular that his position is not directly linked to the acquisition or distribution of EU funds and will normally not require any interaction with the European Commission.

- 16) The Committee concluded therefore that there were no legal or other impediments which should prevent Mr Vella from accepting a position of advisor for the 'Malta Enterprise' corporation. However, a number of restrictions should be recalled and set out explicitly in the Commission decision based on Article 11(3) of the Code of Conduct, in order to ensure the compatibility of the activity with the obligations applying after the end of the mandate.
- 17) The Committee advised the Commission to recall in its decision the provisions of Article 11(4) of the Code as regards lobbying and to clarify the scope of the term 'lobbying'. The Committee underlined that the term 'lobbying' includes indirect lobbying and covers activities aiming at 'influencing the formulation or implementation of policy or legislation, or the decision-making processes' of the Commission as set out in 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. This would also cover any potential activity with a view to obtaining EU funding. Nonetheless, 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.
- 18) The Committee also acknowledged the risk that specific information or insights that Former Commissioner Vella obtained during his term of office would be relevant to the work of 'Malta Enterprise'. This might concern information obtained in areas falling within his previous Commission portfolio or in other areas in which he was involved via his collegial responsibilities in the Commission. The Committee consequently considered that the Commission's decision should stress that, according to Article 339 of the Treaty on the Functioning of the European Union, the 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.
- 19) The Committee underlined that the Commission's decision should also explicitly insist on the importance of complying strictly 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 Vella's 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 Vella obtained during his mandate, be it within his portfolio responsibilities or within the College. The Committee observed that compliance with this restriction is particularly important concerning information relating to Mr Vella's former portfolio on Environment, Maritime Affairs and Fisheries, which may be of interest for 'Malta Enterprise'. Should any activity of the corporation be related to such protected information and should the Former Commissioner be involved in this activity, he should recuse himself from this discussion or file.

- 20) Finally, the Committee considered that the Commission 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
- 21) The Committee concluded that Former Commissioner Vella's envisaged activity as advisor to 'Malta Enterprise' would be compatible with Article 245 of the Treaty on the Functioning of the European Union, subject to the respect of the conditions specified in its opinion and mentioned above.
- 22) The Commission has considered the Independent Ethical Committee's opinion and shares its conclusions.

HAS DECIDED AS FOLLOWS:

*Sole Article*

Former Commissioner Karmenu Vella's envisaged activity as advisor to 'Malta Enterprise' corporation is compatible with Article 245(2) of the Treaty on the Functioning of the European Union, subject to the respect, by Mr Vella, 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, until the end of the period of two years following his term of office (1 December 2021), Former Commissioner Vella shall refrain from lobbying Members of the Commission or Commission staff on behalf of the 'Malta Enterprise' on matters for which he was responsible during his mandate. This includes the prohibition to lobby in view of obtaining EU funding. Lobbying' includes also indirect lobbying 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;
- In accordance with Article 339 of the Treaty on the Functioning of the European Union, Former Commissioner Vella shall refrain from participating in any activity or decision-making procedure within 'Malta Enterprise', either falling within his former portfolio or in other areas in which he was involved via his collegial responsibilities in the Commission, 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;

- In line with Article 11(1), in conjunction with Article 5, of the Code of Conduct for the Members of the Commission, Former Commissioner Vella 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 refraining from calling into question decisions taken by the Commission during his term of office, as well as 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. Compliance with this restriction is particularly important concerning information relating to Mr Vella’s former portfolio on Environment, Maritime Affairs and Fisheries, which may be of interest for ‘Malta Enterprise’. Should any activity of ‘Malta Enterprise’ be related to such protected information and should the Former Commissioner be involved in this activity, he shall recuse himself from this discussion or file;
- In line with Article 13(2) of the Code of Conduct for the Members of the Commission, Former Commissioner Vella 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.

Done at Brussels, 13 October 2021.

*The President*  
*Ursula von der Leyen*