

Opinion
of the
Independent Ethical Committee
established
by the European Commission
16 December 2020

Subject: Request for an opinion on former Commissioner Oettinger's envisaged post term of office activity as Chairman of the Advisory Board of Donner und Reuschel AG

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

Procedure

1. On 23 November 2020, 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 Günther Oettinger's envisaged activity as Chairman of the Advisory Board of 'Donner und Reuschel AG' with Article 245 of the Treaty on the Functioning of the European Union.

Facts

Donner und Reuschel AG

2. Donner und Reuschel AG is a German private bank founded in 1798, with offices in Hamburg, Munich, Kiel, Frankfurt and Düsseldorf. It also has a subsidiary in Luxembourg, named Donner & Reuschel Luxemburg S.A. Donner und Reuschel AG belongs to the Signal Iduna Group, one of the largest German insurance and financial services groups.
3. The bank provides financial expertise to a range of clients. Their stated goal is to 'give private customers access to selected expert networks and to the best possible solutions available on the market'.
4. According to the website of the bank, Donner und Reuschel AG's activities encompass a wide range of financial services such as advice on asset management,

real estate projects as well as financial planning. The bank provides these services to private customers, entrepreneurs, asset managers, real estate clients as well as institutional investors and other private entities. Donner und Reuschel AG offers the following financial services:

- To private customers, it offers advice on asset management, financial planning, financing and real estate;
- To entrepreneurs, the bank gives advice on asset management (digital and classic), structuring custody accounts and investments, corporate finance, real estate, financial planning, management of risk and pensions and currency management;
- To real estate clients: Donner und Reuschel AG advises on financing of real estate and related investments, financing concepts for real estate, project financing as well as purchase financing;
- To institutional investors: the bank offers advice on capital investments based on the current market opportunities and challenges in the industry, project-development of asset management, risk management and risk control, brokerage and on tenders related to capital investments.

In addition, Donner und Reuschel AG's website mentions a more recent activity and offers 'personal contact support' to each of its clients. This service entails taking over all administrative tasks for the clients and provides the 'highest level of asset management'.

5. Donner & Reuschel AG has been the private bank of the Signal Iduna Group since 1990, which is one of the largest German insurance and financial services groups. According to the bank's website, the group's income from insurance fees is 5.9bn EUR, which makes it one of the big German insurance companies. The group offers pensions and financial products, and has around 10,000 employees.
6. In addition to these commercial activities, according to their website, Donner und Reuschel AG supports several charities under their Corporate and Social Responsibility framework.

The organisational structure of Donner und Reuschel AG

7. According to information publicly available on Donner und Reuschel AG's website, the governance structure of the bank consists of a Management Board, a Supervisory Board and an Internal Audit Department. In addition, an Advisory Board assists the bank's management team.
8. According to the website, the Management Board is composed of two persons, one of which is the spokesman for the Management Board.
9. The Supervisory Board is composed of nine members. The Chairman and the deputy Chairman are, in addition to those functions, both members of the board of Signal Iduna Group.

10. As regard the Advisory Board, the bank's website mentions that it is composed of a Chairman and twenty-two members. Among those members are a former Prime Minister of Bavaria, a former Bavarian State Minister of Finance as well as a former member of the advisory board of Deutsche Bank. Directors of the bank attend meetings of the Advisory Board, which usually meets twice a year. According to information provided by former Commissioner Oettinger, the Board is composed of 'economic and public figures' and its role is to advise 'management in the performance of their duties on economic matters and to promote the business success of the bank' as well as 'publicise the name Donner und Reuschel and its products and services'.

Former Commissioner Oettinger's envisaged position at Donner und Reuschel

11. Former Commissioner Oettinger has been invited to join the Advisory Board of Donner und Reuschel. According to information he provided, former Commissioner Oettinger would be appointed by the Management Board as Chairman of the Advisory Board.
12. As Chairman, former Commissioner Oettinger would be in charge of, amongst others, calling the meetings of the Advisory Board, following the Management Board's request to do so. In his position, Mr Oettinger would be obliged to respect the obligation of 'banking secrecy' and would have to respect the confidentiality of sensitive information obtained in his capacity of Chairman of the Advisory Board.

Links of Donner und Reuschel AG with the European Commission

13. According to the Financial Transparency System of the European Commission, Donner und Reuschel AG did not receive funds from the European budget. The bank's income results from its commercial activity. According to the abovementioned system, Signal Iduna Group did not receive funds from the European budget either.
14. Neither Donner und Reuschel nor Signal Iduna Group are registered in the Joint Transparency Register of the European Commission and the Parliament.

Legal context

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.*

20. 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

21. 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 for the Members of the European Commission, which develops these obligations in more detail.
22. Former Commissioner Oettinger intends to accept a position as Chairman of the Advisory Board of the bank Donner und Reuschel AG. The responsibilities of the Advisory Board are to advise management on economic matters, performance and to promote the bank. As Chairman, former Commissioner Oettinger is expected to call meetings of the Advisory Board and advise management on the abovementioned topics.

23. In the present case, the tasks of former Commissioner Oettinger as Chairman of the Advisory Board of Donner und Reuschel AG are, as such, not directly related to his former portfolios when he was a member of the Commission and will normally not require any interaction with the Commission. However, given the broad scope of economic and financial interests of Donner und Reuschel AG, this activity still requires a careful assessment as regards the principles of integrity and discretion established by Article 245 of the Treaty on the Functioning of the European Union.
24. As such, specific information or insights that former Commissioner Oettinger obtained during his two terms of office could be relevant for business and management decisions of the bank on which the Advisory Board would have to provide advice. This can concern information obtained in areas falling within his previous portfolios in the Commission or in other areas in which he was involved via his collegial responsibilities in the Commission.
25. Hence, the Commission decision should recall and explicitly spell out a number of restrictions in order to ensure the compatibility of the activity with the obligations applying after the end of the mandate.
26. The Committee considers it important that both former Commissioner Oettinger and Donner und Reuschel AG are fully aware of the obligations of former Members of the Commission, which continue to apply after their term of office.
27. The Committee deems it essential that the Commission decision stresses explicitly the importance of strictly respecting the obligations resulting from Article 339 TFEU, which provides that *'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.'*
28. In addition, the decision should equally recall explicitly 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 Oettinger's terms 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 Oettinger obtained during his mandate, be it within his portfolio responsibilities or within the College.
29. The Committee recommends therefore that the Commission decision should include a condition that Commissioner Oettinger shares a copy of the Commission Decision with Donner und Reuschel AG and confirms this to the Commission. This is in line

with Committee's previous opinions¹, that aimed to ensure full transparency of the applicable obligations, conditions and restrictions and provide the Commission with an additional assurance that situations which could create a risk for the respect of those obligations will be avoided or addressed by both the former Commissioner and the bank.

30. The decision should furthermore 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.
31. Finally, while the membership in an advisory board does not usually involve lobbying activities on behalf of the bank, the decision should nevertheless recall explicitly that Article 11(4) of the Code also applies to this activity for a period of two years after the end of the mandate. Article 11(4) provides that former Members shall not lobby the Commission on behalf of their own business, that of their employer or client, on matters for which they were responsible within their portfolio, including the portfolio in a previous term of office, for a period of two years after ceasing to hold office. The decision should extend this, in the present case, to all matters in which former Commissioner Oettinger was involved at College level, even if he was not directly responsible for them through his portfolio responsibilities.
32. Under these conditions, the Committee considers that the envisaged activity would be compatible with Article 245 TFEU on the condition that the above-mentioned obligations, conditions and restrictions are explicitly and in full set out in the decision and brought to the attention of Donner und Reuschel AG by former Commissioner Oettinger.

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¹ Opinion of the Independent Ethical Committee of 29 June 2020 on the request for an opinion on former Commissioner Günther Oettinger's envisaged post term of office activity as Member of the Supervisory Board of Amundi Deutschland GmbH, München, (https://ec.europa.eu/info/files/opinion-independent-ethical-committee-29062020-0_en).