Opinion

of the

Independent Ethical Committee

established

by the European Commission

22 September 2021

Subject: Request for an opinion on former Commissioner Karmenu Vella's post-term of office activity as regards his activity for the 'Malta Enterprise' corporation

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 8 September 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 Karmenu Vella's post-term of office activity as regards his activity for the 'Malta Enterprise' corporation, in order to ensure compliance with Article 245 of the Treaty on the Functioning of the European Union.

Facts

General information

- 2. On 3 September 2021, former Commissioner Vella informed the Commission that he intended to accept a position of advisor for the 'Malta Enterprise' corporation.
- 3. The 'Malta Enterprise' corporation is a governmental agency located in Pietà, Malta. It also has 3 overseas offices respectively based in China, Dubai and the United Kingdom.

- 4. The 'Malta Enterprise' corporation was created in 2003 under the 'Malta Enterprise Act'¹, and became operational in January 2004. It combines the functions of 3 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.
- 5. The 'Malta Enterprise Act' notably aims to 'make provision for the establishment of a corporation in Malta, to determine the functions and powers of the corporation in order to promote enterprise and related business undertakings in Malta'. In this regard, the 'Malta Enterprise' corporation is subject to regulations by the Ministry for the Economy and Industry.
- 6. The main function of the 'Malta Enterprise' corporation is to promote investments and to support the expansion of industries in Malta. In his notification to the European Commission, former Commissioner Vella confirmed that the 'Malta Enterprise' corporation is 'Malta's economic development agency'.
- 7. Based on the information publically available on the 'Malta Enterprise' corporation's website, it is giving support to 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 make all forms of investment, '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'.
- 8. In addition, the 'Malta Enterprise' corporation acts 'as an adviser to 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 the private sector.
- 9. The capital of the 'Malta Enterprise' corporation is held entirely by the Maltese Government.
- 10. The governance structure of the 'Malta Enterprise' corporation includes a Chairman, a Deputy Chairman and a Board of Directors appointed by the Minister for the 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.

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¹ Malta Enterprise Act - Chapter 463 of the Laws of Malta adopted on 11 August 2003 and published on Legislation Malta on 27 July 2013.

Funding

11. 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.

Links of 'Malta Enterprise' with the European Commission

12. 'Malta Enterprise' is not registered in the mandatory transparency register of the European Parliament, the Council of the European Union and the European Commission.

Former Commissioner Vella's position

- 13. Former Commissioner Vella envisaged activity would consist of serving as an advisor for the 'Malta Enterprise' corporation.
- 14. According to 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'. Given the geographical characteristics of Malta, fisheries and maritime affairs are undoubtedly an important aspect of the Maltese's economy and are to a significant extent part of the companies' investment policies.
- 15. Against this background, the 'Malta Enterprise' corporation is, among other sectors, tasked to promote investments and to support the expansion of industries in the field of maritime services.
- 16. Therefore, in his envisaged function of advisor for the 'Malta Enterprise' corporation, Former Commissioner Vella may be expected to provide advices related to his former portfolio of Commissioner for Environment, Maritime Affairs and Fisheries.

Legal context

17. 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.

18. 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.

- 19. 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.
- 20. 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.
- 21. 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.
- 22. 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

- 23. 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.
- 24. Former Commissioner Vella intends to accept a position of advisor for the 'Malta Enterprise' corporation, a governmental agency with its main office located in Pietà, Malta. Operational in January 2004, the corporation has been created in 2003 under the 'Malta Enterprise Act'. The latter notably entrusts the 'Malta Enterprise' corporation to promote investments as well as to support the expansion of industries in Malta.
- 25. The 'Malta Enterprise' corporation is giving support to enterprises engaged in various sectors, including in maritime affairs. In his envisaged activity of advisor, Mr Vella may be in the position to provide advices related to his former portfolio as Commissioner for Environment, Maritime Affairs and Fisheries.
- 26. Nonetheless, the Committee does not consider this envisaged activity to represent a risk with regard to the interests of the Commission and the European Union. The envisaged position is not directly linked to the acquisition or distribution of EU funds and will normally not require any interaction with the European Commission.
- 27. The Committee does therefore not see any legal or other impediments to 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.
- 28. The Committee 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'. The Commission decision should clarify 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.

- 29. Moreover, there is a risk that specific information or insights that former Commissioner Vella obtained during his term of office are relevant to the work of the 'Malta Enterprise' corporation. This can concern information obtained in areas falling within his previous portfolio in the Commission or in other areas in which he was involved via his collegial responsibilities in the Commission.
- 30. As a result, the Commission decision should stress 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.
- 31. The decision should equally insist explicitly 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.
- 32. 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 the 'Malta Enterprise' corporation. Should any activity of the corporation be related to such protected information and the former Commissioner be involved in this activity, he should recuse himself from this discussion or file.
- 33. Finally, the 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.

34. Therefore, based on the above-mentioned considerations, the Committee concludes that the envisaged activity would be compatible with Article 245 TFEU, subject to the respect of the conditions specified in this opinion.

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Heinz Zourek