

Opinion
of the
Independent Ethical Committee
established
by the European Commission
23 December 2019

Subject: Request for an opinion on Commissioner Thyssen’s envisaged post term of office activity as Chair of the Board of Trustees and of the Board of Governors of the University of Leuven (Katholieke Universiteit Leuven)

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 29 November 2019, 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 Commissioner Thyssen’s envisaged activity as Chair of the Board of Trustees and of the Board of Governors of the University of Leuven with Article 245 of the Treaty on the Functioning of the European Union.

Facts

The University of Leuven

2. The University of Leuven (KU Leuven), historically founded in 1425, is a comprehensive university, consisting of 16 faculties, and offering a wide variety of internationally oriented programmes, namely 78 bachelor’s programmes, 205 master’s programmes, and 44 advanced master’s programmes (enrolling in total more than 58.000 students).
3. These programmes are supported by high-quality interdisciplinary research conducted at both the university and its hospitals. KU Leuven counts 7,296

researchers, has research expenses of 475 million EUR and hosts 5,098 PhD students. KU Leuven has 14 campuses in 10 cities across Flanders.

The organisation of the KU Leuven

4. KU Leuven is subdivided into three units: the University, fulfilling academic tasks, KU Leuven University Hospitals, fulfilling clinical tasks, and KU Leuven Research and Development, which performs the valorisation tasks intrinsic to its public mission.
5. Each subdivision has its own structure and bodies for the day-to-day management. This day-to-day management is supervised and controlled by the Board of Trustees and the Board of Governors.
6. According to the university's Statutory Regulations, the Board of Trustees controls whether KU Leuven complies with its Identity and Mission Statement, whether it respects the Global Strategic Vision and also monitors KU Leuven's overall functioning.
7. The Board of Governors oversees KU Leuven's activities, decides on the global strategy and follows up on how it is implemented. Furthermore, it approves the university's budget and balance sheet. It also decides on all management and executive decisions concerning KU Leuven's assets and on accepting or rejecting bequests or legacies.
8. As indicated above, KU Leuven is governed by a plurality of different management bodies. Important actors are, amongst others, the Rector who has the statutory power of representation and the Managing Director, who is in charge of the University's global, logistic, administrative and financial organisation.
9. The Board of Trustees and the Board of Governors have therefore a more strategic and high-level decision-making function. This includes the approval of the budget and financial spending of KU Leuven by the Board of Governors on a yearly basis.

Commissioner Thyssen's position

10. The Statutory Regulations of the University provide that the Chair of the Board of Governors also becomes a member of the Board of Trustees and equally chairs it.
11. Commissioner Thyssen has thus been nominated to become the Chair of both boards. Her nomination would take effect on 1 June 2020 with a duration of 4 years, renewable once.
12. The members of the Board of Governors receive a remuneration.

13. The function of the Chair of these bodies is to draw up the agenda and to call for the meeting. Moreover, Commissioner Thyssen would perform all functions, which are typically attributed to a Chairperson of a Board.

Funding of the University

14. In Flanders, recognized state and private universities are all subsidized under the same allocation rules that take into account a wide range of input and output factors. Once the amount of funding has been determined, it is provided as a block grant, which the university is free to distribute according to its own priorities.
15. The funding received by KU Leuven can be categorized into three streams.
16. The first stream concerns the teaching and research block grant. It consists of an overall budget to be distributed among Flemish universities as a fixed amount, taking into account scale effects. The two most important factors that influence the calculation of the block grant is the volume of teaching activity and the volume of research activity.
17. The second and third stream concern research-funding allocations. KU Leuven receives funding for research driven by inquisitiveness, a grant aimed at stimulating universities to collaborate with business and industry and foster innovation, as well as various smaller targeted allocations.
18. In addition, public research funds are also provided by the Flemish Fund for Scientific Research. These funds are allocated through research projects, PhD grants, and postdoctoral grants.
19. Lastly, the Flemish government provides minimal funding for real estate and large equipment investments as well as various smaller targeted grants. Tuition fees generated remain relatively low, accounting for about 4% of total university revenue. Other funding also includes fundraising, endowment and rental income.
20. KU Leuven's first-stream funds are provided by the government, largely on the basis of the degrees delivered, and then internally allocated across groups and faculties of the university on the basis of an allocation model, which is based on teaching efforts and research output.
21. Faculties and research departments secure second and third-stream funding, as well as income from consulting activities and industrial collaborations, government-funded project money, and chairs funded by the private sector.

Funding received by services of the European Commission

22. Since 2014, KU Leuven has received resources from 550 different budgetary commitments granted by different services of the European Commission. The grants to KU Leuven in the course of the last five years amount to a total of EUR 221,665,131.
23. Yet, only EUR 441,550 were granted by the Directorate-General for Employment, Social Affairs and Inclusion, which is the Directorate-General for which Commissioner Thyssen was directly responsible as Commissioner for Employment, Social Affairs, Skills and Labour Mobility.
24. Moreover, as mentioned above, it is the responsibility of the faculties and research departments to secure these second and third stream funding. The sole responsibility of the Board of Trustees and the Board of Governors is therefore to approve the budget. Members of the Board do not seem to have an active role in securing it.

Legal context

25. 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.

26. 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.

27. 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.

28. 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

29. 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, which develops these obligations in more detail.
30. Commissioner Thyssen will be responsible to chair the meetings of the Board of Trustees and the Board of Governors. These two boards have the responsibility to supervise the general functioning of the university without being involved in operational day-to-day management. Moreover, they are not responsible for securing the university funds. The Commissioner's envisaged position is therefore not directly linked to the acquisition or distribution of funds.
31. Furthermore, the Commissioner's envisaged contribution to fostering education and research development by chairing the boards of a university does also not represent a risk with regard to the interests of the Commission.
32. The Committee does therefore not see any legal or other impediments to accepting the function of executive member of the Board of Trustees after the term of office.
33. However, a number of restrictions should be either recalled or set out explicitly in the Commission decision based on Article 11(3) of the Code of Conduct to ensure the compatibility of the activity with the obligations applying after the end of the mandate. This applies in particular to future decisions of the Commission on the allocation of funds.
34. In this regard, it seems appropriate to 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 KU Leuven, on matters for which the Commissioner was responsible, for a period of two years after ceasing to hold office applies.
35. This prohibition to lobby (i.e. the promotion of certain interests with the objective to influence the formulation or implementation of policy or legislation, or the decision-making process of the Commission directly or indirectly) does not affect participation in public events or general exchanges of, and on, publicly available information with Members of the Commission or Commission staff.
36. Moreover, the Commission decision should 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.

37. Should any activity of the university be related to such protected information and the Commissioner be involved in this activity, she should recuse herself from this decision.
38. Moreover, the decision should recall that, according to Article 11(1), second sentence of the Code of Conduct, a former Member continues to be bound by the duties of collegiality and discretion, as laid down in Article 5 of the Code, with respect to the Commission's decisions and activities during his or her term of office.
39. The Committee concludes that the envisaged activity would be compatible with Article 245 TFEU under the above-mentioned conditions.

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