

Opinion
of the
Independent Ethical Committee
established
by the European Commission
29 June 2020

Subject: Request for an opinion on former Commissioner Neven Mimica's envisaged post-term of office activity as Member of the Board of Directors of Friends of the Global Fund Europe

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 25 June 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 Commissioner Mimica's envisaged activity as Member of the Board of Directors of the Friends of the Global Fund Europe with Article 245 of the Treaty on the Functioning of the European Union.

Facts

The Global Fund

2. The Global Fund was created in 2002 as a financial instrument. Its headquarters are based in Switzerland, which has recognised its international legal capacity. The creation of the Global Fund was endorsed by the G8 at the July 2001 summit in Genoa.
3. The European Commission is a voting member of the Board, alongside donor Member States (Belgium, Germany, France, Spain, Italy, Portugal), non-EU countries, regional representatives, non-governmental organisations, private foundations and private-sector entities.

4. The declared aim of the Global Fund is to ‘make available and leverage additional financial resources to combat HIV/AIDS, TB and malaria.’ It reports that it does so by providing attracting, managing and disbursing ‘grants to public, private and nongovernmental programs’, via public-private partnerships, ‘in support of technically sound and cost-effective interventions’.

It intends to thereby ‘make a sustainable and significant contribution to the reduction of infections, illness and death, thereby mitigating the impact caused by HIV/AIDS, tuberculosis (TB) and malaria in countries in need, and contributing to poverty reduction as part of the Millennium Development Goals’.

The Global Fund works together with governments, civil society and private entities. It mobilises and invests funds strategically to support programs run by local experts in more than 100 countries.

A wide range of entities is eligible to obtain funding through the Global Fund: government agencies, civil society organisations, third-party groups charged with program and financial responsibility, multilateral institutions, universities and other academic institutions.

5. According to the organisation’s published information, by the end of 2018 health programs supported by the Global Fund had reportedly saved 32 million lives, provided HIV treatment to 18.9 million people and treatment against tuberculosis to 5.3 million patients, and have distributed 131 million mosquito nets.
6. The Global Fund does not have country offices, but works together with independent umbrella associations called ‘Friends of the Global Fund’. There are four such regional associations of ‘Friends of the Global Fund’: in Europe, in Japan, in the United States and in Australia. All four associations partner together but are financially independent from one another and have their own core objectives and governance structure.

Friends of the Global Fund Europe

7. ‘Friends of the Global Fund Europe’ is one of the four regional associations linked to the Global Fund but set up as separate entities. It was founded in April 2005 as a not-for-profit organisation, under the high patronage of the President of the French Republic, with the aim of raising awareness of the Global Fund’s activities in Europe. It carries out its advocacy activities in Germany, Belgium, Spain, Sweden, Norway, Denmark, Finland, France, Italy, Luxembourg and towards the European Institutions.

8. 'Friends of the Global Fund Europe' works to 'bring awareness about the issues raised by the HIV/AIDS, tuberculosis and malaria epidemics and global health, among decision-makers, parliamentarians, civil society organisations and leading figures from the academic and research communities'. It also aims to 'contribute to the mobilisation of the resources needed to fight these diseases' and 'communicate the results and impact of the Global Fund'. It furthermore pursues the declared broader objective of supporting and encouraging strategic initiatives to address global health cross-cutting issues (such as gender inequality, access to medical treatment).
9. In order to achieve its declared objectives, 'Friends of the Global Fund Europe' reportedly engages in political advocacy, communication and resource mobilisation initiatives in favour of the Global Fund, together with European partners such as NGOs, academics, public and private entities involved in the fight against global pandemics and in the field of global health. The reported activities of 'Friends of the Global Fund Europe' also include the organisation of events, conferences, photographic exhibitions and study tours. The organisation also publishes reports and press releases about its events.

Governance of 'Friends of the Global Fund Europe'

10. According to publicly available information regarding the organisation that former Commissioner Mimica submitted with his notification, the governance of 'Friends of the Global Fund Europe' is ensured by three entities: the Board of Directors, the Advisory Committee and the Secretariat.
11. The Advisory Committee is composed of seven members with varying backgrounds (academia, medics, science, journalism). Its reported goal is to inform the organisation's advocacy strategy through scientific and political expertise. It is 'designed as a trans-European platform for high-level exchanges to promote debate on key global health issues'.
12. The Secretariat of 'Friends of the Global Fund Europe' is composed of seven people, 'including consultants based in the countries and working closely with the vice-chairs in charge of [specific] countries'.
13. The Board of Directors of 'Friends of the Global Fund Europe' is composed of eleven members, including the President and three Vice-Presidents. The Board is in charge of bringing together 'leading European politicians and parliamentarians, researchers, experts from the civil society and the private sector, all committed to the fight against HIV/AIDS, tuberculosis and malaria, and to global health'.
14. The Board of Directors is not linked to the Global Fund's main governing body, as 'Friends of the Global Fund Europe' is an independent entity. Consequently, members of the Board of Directors do not exercise any managerial functions towards the Global Fund.

Commissioner Mimica's position

15. Commissioner Mimica has informed the Commission that he has been asked to join the Board of Directors of Friends of the Global Fund Europe as a member. He indicated that this position was a non-remunerable and non-gainful activity.
16. The activity would be the same as for former Commissioner Piebalgs, for which the *Ad Hoc* Ethical Committee gave a favourable opinion in November 2014.
17. The Board of Directors is not in charge of acquiring or distributing funds. Hence, former Commissioner Mimica's activity does not seem to entail any activity related to the management of funds.

Funding of the Global Fund and Friends of the Global Fund Europe

18. According to publicly available information, the Global Fund regularly receives funds from the EU budget. Since it was created in 2002, the European Union has committed more than 2.6 billion euro to the Global Fund programs. The EU is the sixth-largest donor to the Global Fund and represents on average around 5 percent of all contributions.
19. The Global Fund also receives financial support from Member States.
20. Based on the information published in the Commission's Financial Transparency System, the Committee is not aware of any financial commitments of the Commission towards 'Friends of the Global Fund Europe' specifically.
21. 'Friends of the Global Fund Europe' is registered in the Joint Transparency Register of the European Parliament and the Commission. Two members of former Commissioner Mimica's Cabinet had a meeting with representatives of 'Friends of the Global Fund Europe' in January 2019, in order to 'discuss the potential participation of Commissioner Mimica to a high-level event of global health'.

Legal context

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.*

27. 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

28. 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.
29. As a Member of the Board of Directors of 'Friends of the Global Fund Europe', former Commissioner Mimica would attend meetings of the Board and contribute to raising awareness of the association's activities and goals. The activity is non-remunerated. Mr Mimica has not informed the Commission about whether this activity would entail any involvement in the acquisition or distribution of EU funds.
30. In November 2014, the Committee gave a favourable opinion on former Commissioner Piebalgs' envisaged post-mandate activity as a Member of the Board of Directors of 'Friends of the Global Fund Europe'. This activity is the same as the one envisaged by former Commissioner Mimica.
31. In line with the opinion of the *Ad Hoc* Ethical Committee on the same activity of former Commissioner Piebalgs, the Committee considers that former Commission Mimica's envisaged post-term of office activity, consisting of membership of the Board of Directors of 'Friends of the Global Fund Europe', does not represent a risk with regard to the interests of the Commission and the European Union.
32. The Committee notes indeed that the objectives of 'Friends of the Global Fund Europe' regarding global health and the fight against HIV/AIDS, tuberculosis and malaria pandemics seem to be in line with goals that are shared internationally, including by the European Union.
33. The Committee concludes that, in its view, Mr. Mimica's envisaged post-term of office activity as Member of the Board of Director of 'Friends of the Global Fund Europe' is compatible with Article 245 of the Treaty on the Functioning of the European Union.
34. The Commission might however wish to recall that former Commissioner Mimica remains bound by Article 11(4) of the Code of Conduct for Members of the Commission, laying down the obligation to refrain from lobbying Members or staff of the Commission on behalf of 'Friends of the Global Fund Europe' on matters for which he was responsible within his portfolio, for a period of two years after ceasing to hold office.

The prohibition to lobby (i.e. the promotion of certain interest with the objective to directly or indirectly influence the formulation and implementation of policy or legislation, or the decision-making process of the Commission) does not affect a

possible participation in public events or general exchanges of, and on, publicly available information with Members of the Commission or Commission staff.

35. Given the link between the intended activity and former Commission Mimica's portfolio when he was a Member of the Commission, the Commission might also wish to recall in its decision the confidentiality obligation laid down in Article 339 of the Treaty on the Functioning of the European Union, as well as the general obligations set out in Article 11(1) of the Code, in conjunction with Article 5. The latter articles provide that former Members of the Commission continue to be bound by the duty of integrity and discretion as well as by the duties of collegiality and discretion with respect to the Commission's decisions and activities during their term of office.

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