Opinion

of the

Independent Ethical Committee

established

by the European Commission

23 August 2024

Subject: Request for an opinion on Executive Vice-President Vestager's envisaged post term of office activity as Chairperson of the Board of Governors of the Technical University of Denmark (Danmarks Tekniske Universitet)

On request of the President of the European Commission, the Independent Ethical Committee, composed of Mr Allan Rosas, Ms Elisabeth Morin-Chartier and Mr Jerzy Plewa, delivers the present opinion:

Procedure

- 1. On 10 July 2024, Margrethe Vestager, Executive Vice-President for A Europe Fit for the Digital Age, notified the Commission of her intention to accept the position of Chairperson of the Board of Governors of the Technical University of Denmark.
- 2. On 26 July 2024, 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 Executive Vice-President Vestager's envisaged activity with Article 245 of the Treaty on the Functioning of the European Union.

Facts

The Technical University of Denmark

3. The Technical University of Denmark, founded in 1829 and registered in Kongens Lyngby, Denmark, is an independent and self-governed university. Its study programmes focus on technical and natural sciences. It was granted an institutional accreditation by the Danish Accreditation Institution in 2014.

- 4. The Technical University of Denmark is a member of the EuroTech Universities Alliance, a strategic partnership of six leading universities of science and technology. The alliance engages in advocacy towards the European Commission through its joint office in Brussels. The office in Brussels informs university staff about EU policy and funding.
- 5. According to its website, the Technical University of Denmark offers scientific advice to international authorities and institutions, such as the European Commission's Scientific, Technical and Economic Committee for Fisheries and the European Food Safety Authority. Additionally, the University serves as EU reference laboratory for pesticides in feedstuffs and cereals; metals and nitrogenous substances in feed and food; food processing contaminants; antimicrobial resistance; and fish and crustacean diseases.
- 6. The Technical University of Denmark has been registered in the Joint Transparency Register of the European Parliament, the Council of the European Union, and the European Commission since 1 March 2024 (REG Number: 566008653066-89).

The organisation of the Technical University of Denmark

- 7. The Board of Governors is the highest authority of the Technical University of Denmark and reports to the Minister for Science, Innovation and Higher Education for the activities of the University.
- 8. The Rector, who is the Chairperson of an Executive Board, oversees the daily management of the University. He or she reports to the Board of Governors.
- 9. Departments, other university entities like research centres, staff entities supporting interdisciplinary tasks and different boards and councils complete the University's institutional structure.
- 10. Four affiliated companies (Bioneer Ltd.; DFM Ltd.; Pre-Seed Innovation and the DTU Science Park), with their own independent boards, support the University's core services. All four companies are fully-owned subsidiaries of the Technical University of Denmark and constitute contact points for the business sector.

Role of the Board of Governors

- 11. As highest authority, the Board of Governors is responsible inter alia for approving the University's strategy, budget and action plans, entering into development contracts with the Minister of Science, Technology and Innovation, appointing the Rector, approving the allocation of all resources and the principles on the use of resources as well as making decisions on new building projects.
- 12. The Board of Governors consists of ten members: six external members, including the Chairperson, two staff representatives and two representatives elected by and from the students of the University.

- 13. It takes its decisions by a majority of ordinary votes. In the event of a tied vote, the Chairperson has the deciding vote.
- 14. The Board of Governors convenes four times a year and its meetings are public. It may hold additional meetings at the request of four of its members or of the Chairperson.

Specific responsibilities of the Board of Governors regarding financial matters

- 15. The Board of Governors has a strategic and high-level decision-making function. As mentioned above, this includes the approval of the budget and financial spending of the Technical University of Denmark on a yearly basis.
- 16. Additionally, the Board of Governors is responsible for disposing of the Technical University of Denmark's capital stock in the form of real estate and loans.
- 17. The Board of Governors also reviews and discusses the university's financial statements, including the interim financial statements and the annual report with financial statements.
- 18. Furthermore, the Board of Governors assesses the university's financial risks and updates the Financial Risk Management Strategy every three years.
- Executive Vice-President Vestager's envisaged position
- 19. Commissioner Vestager indicated that the Danish government intended to nominate her to become the Chairperson of the Board of Governors, with effect on 1 January 2025. The mandate would last four years, until 31 December 2029.
- 20. The function of Chairperson of the Board of Governors is a paid position.
- 21. The Chairperson has specific responsibilities within the Board of Governors. Those include being responsible for the strategic dialogue with the Minister on behalf of the University, acting as spokesperson of the Board of Governors, liaising with the Rector between Board of Governors meetings, being responsible for the organisation of the work of the Board of Governors, chairing the meetings of the Board of Governors, conducting salary negotiations with the preferred candidate for the post of Rector, assessing the independence, objectivity and competence of the institution auditor, ensuring that new members are introduced to the work of the Board of Governors, as well as specific tasks related to the appointment and reappointment of external members of the Board of Governors.

Funding of the Technical University of Denmark

22. In 2024, the Technical University of Denmark had an annual income of EUR 836 million. The largest share of income came from grant-fund activities (39%), followed by national subsidies in the form of government research subsidies (27%) and government education subsidies (15%).

Funding received by services of the European Commission

- 23. The Technical University of Denmark has been a regular recipient of funding from the EU Budget. According to the Financial Transparency System of the European Commission, the Technical University of Denmark benefitted from 783 budgetary commitments from 2019 to 2023, amounting to a total contracted commitment of EUR 3.333,86 million, of which EUR 2.462,90 million have been utilised so far. These commitments were distributed over 23 different programmes and managed by 17 Commission Departments.
- 24. Among these 23 programmes, the first three were Horizon Europe (EUR 1.476,37 million), Horizon 2020 (EUR 1.082,25 million), and Euratom Research and Training Program (317,22 million).
- 25. In addition to these programmes, programmes with a possible connection to Executive Vice-President Vestager's responsibilities include the Digital Europe programme (EUR 87.96 million) and the Connecting Europe Facility (CEF) Digital (EUR 4 million).

Previous interactions between Executive Vice-President Vestager and the Technical University of Denmark

- 26. Executive Vice-President Vestager declared that she had held four meetings with the Technical University of Denmark during her mandate and underlined that she had not been involved in decisions regarding the funding of any projects of the Technical University of Denmark during this period. More generally, Executive Vice-President Vestager stated that she has never been involved in funding decisions under the Commission's research programmes. This is because such decisions are taken by the relevant Directorate-General or Agency and not by the Executive Vice-President or her Cabinet.
- 27. Executive Vice-President Vestager also declared that she gave instructions to her Cabinet to take particular care that no possible conflict of interest could arise, or be seen to arise, from her role as Executive Vice-President in charge of 'A Europe fit for the Digital Age'.
- 28. She furthermore committed to acting with particular care during the last months of her mandate, bearing public perception in mind.

Legal context

29. 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.

30. 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.

31. 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.

32. 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

Compatibility of the envisaged activity with Article 245 TFEU

- 33. 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.
- 34. Executive Vice-President Vestager's responsibilities for 'A Europe Fit for the Digital Age' include a leadership role on innovation and research issues. The envisaged position thus bears a link with her responsibilities. However, she has not been directly involved in decisions regarding funding for projects of the Technical University of Denmark.
- 35. The Committee considered the nature of the Technical University of Denmark, the role of its Board of Governors, Executive Vice-President Vestager's envisaged position in the structure of the University and the funding of the University, in particular as regards funding received from the European Commission.
- 36. The Committee notes that Executive Vice-President Vestager will have the possibility to influence the decisions of the Board of Governors. While her vote will only be one out of ten, she will be responsible for the organisation of the work of the Board of Governors and will chair its meetings, granting her additional leverage within the Board of Governors.
- 37. However, the responsibilities of the Board of Governors only bear an indirect link with her current mandate as Executive Vice-President. In particular, the Committee notes that the Board of Governors is not involved in the operational day-to-day management of the University and is not responsible for securing its funding. The envisaged position is therefore not such as to require interactions with the European Commission.
- 38. This means that Executive Vice-President Vestager would not be directly involved in the efforts of the Technical University of Denmark to secure funding from the European Commission.
- 39. For these reasons, the Committee concludes that there are no impediments which should prevent Executive Vice-President Vestager from accepting the position of Chairperson of the Board of Governors of the Technical University of Denmark.
- 40. The Committee however notes that the links between the Technical University of Denmark and the European Commission are substantial. It is thus likely that the University as a whole as opposed to its Board of Governors only will interact

repeatedly with the European Commission during the envisaged activity of Executive Vice-President Vestager as Chairperson of the Board of Governors.

41. For this reason, the Committee recommends that a certain number of restrictions be set out explicitly in the Commission decision, in order to ensure the compatibility of the envisaged activity with the obligations applying during and after the end of the mandate.

Restrictions

Restrictions until the end of the mandate

- 42. Executive Vice-President Vestager should only accept the nomination after the Commission has established the compatibility of the function in question with Article 245 TFEU according to the procedure provided for by Article 11(3) of the Code of Conduct.
- 43. In her capacity as Executive Vice-President, Ms Vestager should be able to continue participating in general policy discussions in areas relevant for the Technical University of Denmark's activities. Other Members of the Commission should however be informed that the Executive Vice-President has accepted a position with the Technical University of Denmark and that the general policy issues under discussion are linked to the Technical University of Denmark's activities.
- 44. In her coordinating responsibility, Executive Vice-President Vestager should not set the agenda of meetings, chair meetings or draw the conclusions of meetings when the topics have, could have, or could be perceived to have, a direct link with the Technical University of Denmark's activities and her own possible future responsibilities. In such specific situations, the Commission or its President should temporarily delegate Executive Vice-President Vestager's coordinating role to another Member.

Restrictions after the end of the mandate

- 45. 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.
- 46. 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 the Technical University of Denmark, on matters for which the Executive Vice-President was responsible, for a period of two years after ceasing to hold office applies. This includes in particular future decisions of the Commission on the allocation of funds to the Technical University of Denmark.

- 47. This prohibition on lobbying does not affect participation in public events or general exchanges of, and on, publicly available information with Members of the Commission or Commission staff.
- 48. 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.
- 49. Should any activity of the Technical University of Denmark be related to such protected information, Executive Vice-President Vestager should refrain from participating in this activity.
- 50. Moreover, the decision should recall that, according to Article 11(1), second sentence of the Code of Conduct, Executive Vice-President Vestager continues to be bound after the end of her term 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 her 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 regarding the use of information and insights that Executive Vice-President Vestager obtained during her mandate.
- 51. Finally, the Commission decision should recall that, in case former Members have a doubt regarding 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.

Conclusion

52. The Committee concludes that the envisaged activity would be compatible with Article 245 TFEU under the above-mentioned conditions.

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