

**Opinion**  
of the  
**Independent Ethical Committee**  
established  
by the European Commission  
**11 March 2021**

**Subject: Request for an opinion on Commissioner Günther Oettinger’s envisaged post term of office activity as member of the Advisory Board of ‘The European Partnership for an Innovative Campus Unifying Regions Alliance’ (EPICUR)**

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 12 February 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 Günther Oettinger’s envisaged activity as member of the Advisory Board of ‘The European Partnership for an Innovative Campus Unifying Regions Alliance’ (EPICUR) with Article 245 of the Treaty on the Functioning of the European Union.

**Facts**

2. EPICUR is an academic alliance composed of 8 European universities from France, the Netherlands, Germany, Poland, Greece and Austria. It is one of the 17 selected academic alliances which won the 2019 call for European Universities pilot project launched by the European Commission via the Erasmus+ programme.

### *The European Universities Initiative*

3. The European Universities Initiative is a pilot project launched by the European Commission in 2019. This new initiative was proposed by the Commission in 2017 at the Gothenburg Social Summit and was later endorsed by the European Council which called for ‘the emergence of at least 20 European Universities by 2024’. This European Universities Initiative is presented as a long-term vision aiming to push towards establishing a European Education Area by 2025.
4. This European Universities Initiative called all selected universities alliances to follow 2 key objectives. First, promoting common European values as well as a strengthened European identity among students and staff and secondly, reaching a substantial leap in quality, performance, attractiveness and international competitiveness of European higher education institutions. In addition, since these projects are funded via a budgetary commitment from the European Union, the selected European Universities are required to deliver tangible results and reach more specific goals by the year 2025. These goals are fourfold: (1) share an integrated, long-term joint strategy for education, based on a common vision and shared values and implemented by joint structures; (2) establish a European higher education interuniversity campus with embedded mobility at all levels, joint and flexible curricula, student diversity and innovative activities; (3) build European knowledge-creating teams of students and academics, to address social and other challenges in a multi-disciplinary approach and (4) act as models of good practice.
5. As a result of the first call, 17 academic alliances were selected, involving 114 higher education institutions from 24 Member States. The European Commission issued a second call in 2020, following which 24 new academic alliances were selected, involving 165 higher education institutions from 26 Member States and other countries participating in the Erasmus+ programme.

### *EPICUR*

6. EPICUR is an alliance of the University of Amsterdam (the Netherlands), the University of Strasbourg (France), the University of Freiburg (Germany), Aristotle University of Thessaloniki (Greece), the University of Natural Resources and Life Sciences (Austria), Karlsruhe Institute of Technology (Germany), the University of Haute-Alsace (France) and Adam Mickiewicz University (Poland). EPICUR is officially registered in Strasbourg, France, as the University of Strasbourg is the official programme coordinator of the alliance. EPICUR gathers around 307 000 students, 40 000 staff members, 118 faculties and 156 research groups.
7. EPICUR was selected under the European Universities Initiative based on the relevance of its proposal as regards its European added value, its level of ambition and innovation, the geographical balance of the participating universities, the quality of the cooperation arrangements between them and its long-term strategy for sustainability and dissemination. According to publicly available information, EPICUR’s vision of a

European University ‘for the future is to create a place where all boundlessly mobile students, doctoral candidates and staff can acquire a broad, interdisciplinary, academic perspective strongly rooted in European traditions, irrespective of their nationality, mother tongue, cultural or socio-economic background’.

8. EPICUR’s stated goal is to create a university that prepares ‘well-informed, open-minded and responsible European citizen’s to create new knowledge and become drivers of transnational innovation’. As advertised on the alliance’s website, EPICUR’s stated values and driving principles are those of ‘mutual trust, reciprocity, responsibility and fair partnerships’.
9. In order to achieve this goal, EPICUR follows four main objectives which are (1) enhancing multilingualism and intercultural awareness through a better connectivity and free movement of student, teachers, researchers and staff, (2) developing models for innovative and student-centred teaching methods, (3) providing thriving frameworks for the next generation of European researchers and (4) developing sustainable governance structures for long-term collaboration in teaching and research. In a more concrete way, the alliance’s work is organised around six projects, which are key actions to be developed for the years to come, each managed by one or more of the partner universities. These key projects are meant to achieve EPICUR’s objectives: (1) steering the alliance, (2) promoting multilingualism and inclusive governance, (3) implementing innovative methods of learnings, (4) open the way to an inter-university campus using a student and staff-centred approach, (5) strengthen and connect European regions and (6) disseminating and sharing good practices and sustainable cooperation.

#### *The organisational structure of EPICUR*

10. EPICUR’s governance is advertised as ‘multi-level and including a bottom-up approach’. The alliance’s organisation structure is composed of a Steering Committee, a Project Management team, a Student Board and an Advisory Board. The Steering Committee is the main decision-making body and is composed of 8 voting members, with 1 representative from each partner university. The Project Management team is the day-to-day management organ of the alliance and is responsible for establishing the links between local partners and the Steering Committee. It is also in charge of ensuring correct and timely execution of the alliance’s project by all partners. As regards the Student Board, this organ is composed of 15 students representing all partner universities.
11. Finally, the Advisory Board is the consultative organ of the alliance. It advises the Steering Committee and is presented as a ‘space of exchange between European experts, where EPICUR’s strategies will be discussed and recommendations sought in order to enhance EPICUR’s influence among European institutions’. Members of the Board are required to ‘provide recommendations for governance and indications on how the Advisory Board can help disseminating EPICUR results in the EU’. In addition, according to information provided by the former Commissioner, members of the

Advisory Board are expected ‘through their capacity’, to represent the alliance’s interest and ‘through lobbying’ to help advance EPICUR’s interests on a European level. To this day, the Advisory Board is still in a set-up phase and is expected to be composed of 8 members: 2 from academia, 2 from the industry/research area, 2 from civil society and two from the political sphere. The Chair of the Steering Committee also chairs the Advisory Board. Members of the Steering Committee participate in the Advisory Board meetings, but are not considered as members per se. According to information provided by former Commissioner Oettinger, the Board is expected to meet with the Steering Committee twice in 2021 and twice in 2022 or ‘with such frequency as the Steering Committee deems necessary’. In addition, the Steering Committee may contact the Board ‘by written procedure in between meetings to discuss on specific matters’.

12. In addition to these governing bodies, EPICUR also relies on Associated Partners. They are organisations chosen by the alliance in order to ‘contribute to the implementation of specific tasks and/or support the dissemination of EPICUR alliance results’. To this day, the ‘European Consortium of Liberal Arts and Sciences’ (ECOLAS) is the only Associated Partner listed on the alliance’s website.

#### *Former Commissioner Oettinger’s envisaged position at EPICUR*

13. Former Commissioner Oettinger was invited to join EPICUR as a member of the Advisory Board. In his notification, he informed the European Commission that this was an honorary function, although travel and accommodation for attending meetings and activities could be supported by the alliance. He would be expected to sign a Code of Conduct once officially nominated.
14. As a member of the Advisory Board, former Commissioner Oettinger would be expected to advise the EPICUR Steering Committee on ‘transversal topics related to its activities: education and training, research, knowledge transfer, strengthening European regions, reinforcing multilingualism and building a virtual inter-university’. According to information he provided, former Commissioner Oettinger would be expected to ‘advise the alliance on the project implementation and support the EPICUR alliance in specific domains’, ‘answer questions from the Steering Committee, comment on specific decisions before their approval and include perspective through *[his]* vast knowledge’, as well as ‘participate in the dissemination of EPICUR’s work, notably through the diffusion of information within *[his]* network’.

#### *Links of EPICUR with the European Commission*

15. EPICUR is not registered in the Joint Transparency Register of the European Parliament and the European Commission. Among the partner universities of the alliance, 3 are registered in the Joint Transparency Register: Aristotle University of Thessaloniki, Karlsruhe Institute of Technology and the University of Natural Resources and Life Sciences.

16. According to the Financial Transparency System of the European Commission, the University of Strasbourg, in its capacity of programme coordinator for the alliance, was the recipient of EUR 5 million granted over three years by the European University Initiative and the Erasmus + programme. This financial commitment is under the responsibility of EACEA (Education, Audiovisual and Culture Executive Agency).

### **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 Oettinger intends to accept a position as member of the Advisory Board of the 'European Partnership for an Innovative Campus Unifying Regions Alliance' (EPICUR). EPICUR is a project selected by the European Commission under the European Universities Initiative launched in 2019.
25. As a member of the Advisory Board of EPICUR, Mr Oettinger would be expected to advise the Steering Committee on the EPICUR project implementation, answer to specific questions, promote the alliance and participate in its dissemination. This position entails giving advice on 'transversal topics' related to the alliance's activities: 'education and training, research, knowledge transfer, strengthening European regions, reinforcing multilingualism and building a virtual inter-university'. This position is honorary.
26. As such, the Committee does not consider this envisaged activity to represent a risk with regard to the interests of the Commission and the European Union. Mr Oettinger would not be remunerated for his position and would only meet twice in 2021 and twice in 2022 with other members of the Board and the Steering Committee. In addition, the envisaged position is not directly linked to the acquisition or distribution of EU funds. Furthermore, the envisaged contribution of former Commissioner to participate in the EPICUR's project is fully in line with the European Commission's policies and objectives.
27. The Committee does therefore not see any legal or other impediments to accepting the function of member of the Advisory Board of EPICUR. 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. This applies in particular to future decisions on the allocation of funds from the European budget implemented directly by the Commission or other EU bodies such as executive agencies.
28. First, the Committee strongly 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 in the sense of influencing the Commission 'through the use of intermediate vectors such as media, public opinion, conferences or social events, targeting the EU institutions' as set out in paragraph 7 of the Agreement between the European Parliament and the European



Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation and applies independently of the location of the employment. This would also cover any potential activity with a view to obtaining EU funding. 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, 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. Should any activity of the Advisory Board of EPICUR be related to such protected information and the former Commissioner be involved in this activity, he should recuse himself from this discussion or file.
30. Furthermore, the Commission decision should underline the importance for former Commissioner Günter Oettinger to comply with the duties of collegiality and discretion, as laid down in Article 11(1) and Article 5 of the Code of Conduct, with respect to the Commission's decisions and activities during his 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 Oettinger obtained during his mandate, be it within his portfolio responsibilities or within the College.
31. Finally, the Commission 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.
32. Therefore, based on the above-mentioned information, 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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