

Opinion
of the
Independent Ethical Committee
established
by the European Commission
21 May 2021

Subject: Request for an opinion on former Commissioner Arias Cañete’s post-term of office activity as regards his activity for the financial institution ‘Beka Finance’

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 9 April 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 Arias Cañete’s post-term of office activity as regards his activity for the financial institution ‘Beka Finance’, in order to ensure compliance with Article 245 of the Treaty on the Functioning of the European Union.

Facts

General information

2. On 24 March 2021, former Commissioner Cañete informed the Commission that he intended to serve as Chairman of the Investment Committee of the agrobusiness fund to be launched by the Asset Management unit of ‘Beka Finance’.
3. ‘Beka Finance’ is a global investment bank, established in 1989 and headquartered in Madrid. It provides financial services to a clientele composed of public companies, individuals and large and medium-sized private corporations. It is an independent Spanish financial institution supervised by two regulators, the Spanish and Portuguese securities market authorities.

4. 'Beka Finance' has three main business lines: investment banking & capital markets, wealth management, and asset management:
 - The Investment Banking & Capital Markets Unit 'offers solutions to midcap companies both in Spain and Portugal. It allows their corporate clients to access alternative sources of financing away from the more traditional banking loans.' They have financed many companies 'through bond issues and direct lending facilities with institutional investors both in Spain and other European countries.'
 - The Wealth Management Unit is of new creation and currently is waiting for Spanish regulator's authorization for being launched. The business will be multi-jurisdictional (Spain, Portugal and Luxembourg) and multi-custodian.
 - The Asset Management Unit offers 'both institutional and retail clients of the group the chance to invest in both traditional and alternative investment funds'. Currently the Asset Management Unit is working on launching a first-time fund in Spain investing on agribusiness assets. This agribusiness fund will invest in all type of nut products.
5. There is little publicly available information on 'Beka Finance' status and governing structure. The governance structured of 'Beka Finance' is composed of a Board of Directors, 7 partners, a management team and heads of corporate services.

Funding

6. According to the Financial Transparency System of the European Commission, 'Beka Finance' did not received 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 'Beka Finance' with the European Commission

7. 'Beka Finance' is not registered in the Joint Transparency Register of the European Parliament and the Commission.

Former Commissioner Cañete's position

8. Former Commissioner Cañete envisaged activity will consist of serving as Chairman of the Investment Committee of the agribusiness fund of 'Beka Finance'. Mr Cañete will be remunerated for this function.
9. Former Commissioner Cañete outlined in his notification to the European Commission that 'Beka Finance considers that due to (his) experience in the sector (he) would help guarantee a successful performance for those investors participating in the fund.'
10. The main responsibilities of Former Commissioner Cañete as 'Chairman of the Investment Committee of the will be:
 - identify investment opportunities in the agribusiness field;
 - analyse in detail those investment opportunities;
 - recommend which are the best options to invest in;

- detailed monitoring of all the investments in which the fund is invested;
- be aware of such investments until the moment of divestment.’

Legal context

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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

17. 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.
18. The balance must be proportionate. It can be achieved by imposing restrictions and conditions on a new professional activity where those restrictions and conditions are more proportionate than a simple prohibition or authorisation.
19. The Code of Conduct provides the framework in which the Commission has to establish this balance between the rights and obligations of its Members with regard to concrete, new activities. This balance cannot be established based on an automatic scheme and requires a case-by-case approach, which takes into account the context and particularities of each individual case.

20. In the present case, the Commission seeks an opinion on the restrictions and conditions which should apply to the activity notified by former Commissioner Cañete as regards the activity he intends to accept from the financial institution 'Beka Finance'.
21. In his role as Chairman of the Investment Committee of the agribusiness fund of 'Beka Finance', former Commissioner Cañete's tasks would be to 'identify investment opportunities in the agribusiness field, analyse these investment opportunities, recommend which are the best options to invest in, monitor all the investments in which the fund is invested and be aware of such investments until the moment of divestment'. The Committee notes that the tasks of former Commissioner Cañete are, as such, not directly related to his former portfolios and will normally not require any interaction with the Commission.
22. There is, however, a risk that specific information or insights that former Commissioner Cañete obtained during his term of office are relevant for business decisions of the Investment Committee of the agribusiness fund of 'Beka Finance'. 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.
23. The Committee considers it important that both former Commissioner Cañete and 'Beka Finance' are fully aware of the obligations of former Members of the Commission, which continue to apply after the term of office.
24. The Committee recommends therefore that the Commission decision should include a condition that Commissioner Cañete shares a copy of the Commission Decision with 'Beka Finance' and confirms this to the Commission. This would ensure full transparency of the applicable obligations, conditions and restrictions towards the company and provide the Commission with an additional assurance that situations which could create a risk for the respect of those obligations will be avoided or addressed by both the Former Commissioner and the company.
25. Regarding restrictions, the Committee deems it essential that the Commission decision stresses explicitly the importance of strictly respecting the obligations resulting from Article 339 TFEU, namely 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.
26. 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 Cañete'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 Cañete obtained during his mandate, be it within his portfolio responsibilities or within the College.

27. Compliance with this restriction is particularly important concerning information relating to Mr Cañete's former portfolio on Climate action and Energy which may be of interest for the Investment Committee of the agribusiness fund of 'Beka Finance'. Should any activity of the Investment Committee be related to such protected information and the Commissioner be involved in this activity, he should recuse himself from the decision and document his decision.
28. Finally, the decision should recall explicitly the provisions of Article 11(4) of the Code of Conduct which provides that former Members shall not lobby the Commission on behalf of their own business, that of their employer or client, on matters for which they were responsible within their portfolio, including the portfolio in a previous term of office, for a period of two years after ceasing to hold office. The decision should extend this, in the present case, to all matters in which former Commissioner Cañete was involved at College level, even if he was not directly responsible for them through his portfolio responsibilities.
29. In addition, the Committee recalls that, as the provisions of the Treaties are not limited in time, the general duties of integrity and discretion established by Article 245 continue to apply even after two years. The Commission should therefore recall in its decision that these duties continue to apply to any possible contacts with the European Commission and its staff on behalf of the 'Beka Finance', even if Article 11(4) of the Code of Conduct does not apply anymore.
30. 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.
31. Under these conditions, the Committee considers that the envisaged activity can be authorised.
32. Therefore, based on the above-mentioned considerations, the Committee concludes that the envisaged activity would be compatible with Article 245 TFEU on the condition that the above-mentioned obligations, conditions and restrictions are explicitly and in full set out in the decision and brought to the attention of former Commissioner Cañete and 'Beka Finance'.

Dagmar Roth-Behrendt

Allan Rosas

Heinz Zourek