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DECISION OF THE EUROPEAN COMMISSION

**on Former Commissioner Günther Oettinger's post term of office professional activity
as member of the Global Advisory Board of Kekst CNC**

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on European Union,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to the Commission Decision of 31 January 2018 (C(2018) 700 final) on a Code of Conduct for the Members of the European Commission, and in particular Article 11(3) thereof,

Whereas:

- 1) According to Article 245(2) of the Treaty on the Functioning of the European Union, the Members of the Commission, when entering upon their duties, 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.
- 2) Article 339 of the Treaty on the Functioning of the European Union provides that the Members of the institutions of the Union shall be required, even after their duties have ceased, not to disclose information of any kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.
- 3) Article 11 of the Code of Conduct for the Members of the European Commission establishes a specific procedure for the assessment of planned professional activities which the Members or former Members of the Commission intend to take up after they have ceased to hold office. 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. If the planned activity is related to the portfolio of the Member or former Member, the Commission shall decide only after having consulted the Independent Ethical Committee unless the planned activity falls within the exceptions set out in Article 11(3), second subparagraph, lit. (a) to (f).

- 4) On 21 August 2020, Former Commissioner Günther Oettinger informed the Commission about his intention to engage in a post term of office activity as member of the Global Advisory Board of Kekst CNC.
- 5) Kekst CNC, which resulted from the merger of two strategic communication firms (Kekst and CNC) in 2018, is a strategic communications firm at international level. As a member of Kekst CNC Global Advisory Board, Mr Oettinger would be expected to contribute to the board's mission to 'provide intelligence and exclusive advice on global macro-economic and geo-political trends and developments'. A preliminary assessment of the notification concluded that it could not be ruled out that the envisaged activity would be related to Mr Oettinger's former portfolio responsibilities as Member of the European Commission given the broad scope of the issues at stake in the field of strategic communications. Against this background, on 25 September 2020, the Commission requested the Independent Ethical Committee's opinion on the compatibility of Former Commissioner Oettinger's notified activity with Article 245 of the Treaty on the Functioning of the European Union.
- 6) The Committee delivered its opinion on 14 October 2020. The Committee examined the nature of Kekst CNC, its activities, its organisational structure, Former Commissioner Oettinger's envisaged position and the links between Kekst CNC and the Commission.
- 7) On the nature of Kekst CNC, based on the information made publicly available by the company, the Committee noted that the company is a global strategic communications consultancy firm that 'helps global business and institutional leaders' to address strategic and communications challenges and opportunities on a global level. Kekst CNC 'partners with clients to develop and execute the necessary integrated communications strategies to gain the confidence of key stakeholders'. Kekst CNC is part of Publicis Groupe, which is a large global communications group. Kekst CNC has its headquarters in Munich (Germany) and has offices in 13 cities in Europe, Asia, the United States and the Middle East, including one in Brussels.
- 8) According to the website of Kekst CNC, the company's activities focus on the following twelve areas: (1) 'Strategic Counsel and Financial Communications': under this heading, the firm refers to advice on corporate reputation and public relations in financial matters; (2) 'Transactions': this activity consists in advising and delivering support on mergers and acquisitions transactions as well as equity capital market; (3) 'Financial and corporate restructuring and insolvency': this activity entails guiding companies in distressed situations such as creditor negotiations, restructurings or workforce actions; (4) 'Shareholder Activism and Corporate Governance': the company's activity under this heading consists of preparing client companies to respond effectively to activists investors and their agenda; (5) 'Purpose, Sustainability and Environmental, Social and Governance

(ESG) Issues’: this activity consists of helping client organisations in applying ESG frameworks and ensuring more transparency; (6) ‘Alternative Investments’: under this heading, Kekst CNC advises clients on media presence and public attention, as well as raising awareness within the institutional landscape; (7) ‘Crisis and Issues Management’: this activity entails helping companies to manage crisis through the creation of crises plans and teams; (8) ‘Cyber Security’: the company’s activity under this heading consists of advising clients of cyber crisis management and creating cyber risk assessments; (9) ‘Litigation support’: Kekst CNC prepares customised communications strategies and plans for engaging with the media and affected stakeholders during a legal process; (10) Change communications’: this activity consists of supporting clients through tailored change communications during periods of transition and transformation; (11) ‘Data, Research and Insights’: Kekst CNC provides clients with access to market leading analytics tools; (12) ‘Public Affairs’: under this heading, the company provides services related to stakeholder engagement, campaigning, advocacy and analyses on the existing regulatory and political framework. Kekst CNC also advises clients on the EU environment, providing strategy development, policy advice and help to outreach to policy makers at EU and Member States levels.

- 9) The Committee noted, based on this information, that Kekst CNC is managed by a ‘partner group’, composed of the company’s partners. The partner group is supported by a Global Advisory Board, to which Mr Oettinger is invited. This Board is currently composed of five members. The Board aims at bringing ‘together some of the most experienced practitioners from the world of communications, business, politics, finance and tech to support the growth of the firm’. According to the information provided by Former Commissioner Oettinger, the Board ‘helps to broaden and enhance Kekst CNC’s global reputation and visibility among senior opinion-leaders and decision-makers [...] and support business development activities’. The Global Advisory Board’s role includes supporting Kekst CNC in building strategic alliances and ‘identifying new revenue streams’. In his position as member of the Global Advisory Board, Mr Oettinger is expected to ‘provide intelligence and exclusive advice on global macro-economic and geo-political trends and developments’.
- 10) As regards the links between Kekst CNC and the European Commission, the Committee noted that the Financial Transparency System of the European Commission does not contain any records of funding received by Kekst CNC or by Publicis Groupe from the EU budget. The Committee furthermore noted that Kekst CNC is registered in the Joint Transparency Register of the European Parliament and the Commission as a consultancy company, as is Publicis Groupe. There is no record in the register of any meeting held with Members of the European Commission or their Cabinets.

- 11) On this basis, the Committee assessed the compatibility of Former Commissioner Oettinger's envisaged position against the framework of the applicable legal context.
- 12) First, and in line with previous opinions, the Committee noted that the Members of the Commission had a right to engage in work and to pursue a freely chosen or accepted occupation after the term of their office, while this right needed to be balanced with the obligations set out in Article 245 TFEU and the Code of Conduct for the Members of the European Commission.
- 13) The Committee recalled the role of the Global Advisory Board and the scope of Mr Oettinger's envisaged activity.
- 14) The Committee underlined that the Members of the Global Advisory Board were not responsible for day-to-day management activities but acted as advisors to the partner group to 'support business development activities'. Moreover, the actual duties linked to the membership in the Global Advisory Board seemed to be moderate given that the Board only met with the partner group 'approximately' once a year.
- 15) As regards financial commitments, the Committee underlined that neither Kekst CNC nor Publicis Groupe have received funding from the European Union budget over the last years according to the Commission's Financial Transparency System. The Committee also underlined that, according to publicly available information, Kekst CNC had not met with Members of the European Commission or their Cabinets.
- 16) Based on this information, the Committee did not see an incompatibility with Article 245 TFEU as long as Former Commissioner Oettinger would respect the obligations which continue to apply to former Members of the Commission after their term of office, and underlined the importance of being fully aware of these obligations.
- 17) The Committee recommended that the Commission should recall and explicitly spell out in its decision a number of restrictions in order to ensure the compatibility of the activity with the obligations applying after the end of the mandate.
- 18) The Commission decision should underline the importance of complying 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 Oettinger's terms of office.
- 19) The Committee noted that specific information or insights that Former Commissioner Oettinger obtained during his mandate could be relevant for business decisions of Kekst CNC and its services to clients and indicated that this entails a potential risk, in view of the advisory functions of the kind performed by

Kekst CNC. This can concern information obtained in areas of the Former Commissioner's portfolios, but also areas in which he was involved as a Member of the College or regarding the Commission's relations with other institutions, Member States, third countries or third parties. The Committee underlined that Mr Oettinger should not provide the benefit of any insights of a confidential or sensitive nature to Kekst CNC.

- 20) While the membership in the Global Advisory Council does not involve lobbying activities on behalf of the company, the Committee considered that the Commission decision should nevertheless recall that Article 11(4) of the Code also applies to this activity for a period of two years after the end of the term of office. The decision should explicitly mention that Former Commissioner Oettinger should not provide any advice to Kekst CNC on direct or indirect lobbying of the Commission by Kekst CNC or its clients, even on matters for which he was not responsible in his former portfolios.
- 21) The Committee also considered that the Commission 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 costs components.
- 22) The Committee recommended emphasising the need for Former Commissioner Oettinger to have a prudent approach when providing strategic advice to Kekst CNC and show in general a high sense of discretion with regard to the use of information and insights as former Member of the Commission.
- 23) 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.
- 24) Therefore, based on the above-mentioned assessment, the Committee concluded that the envisaged activity would be compatible with Article 245 TFEU, subject to the respect of the above-mentioned conditions and restrictions.
- 25) The Commission has considered the Committee's opinion and shares its conclusions.

HAS DECIDED AS FOLLOWS:

Sole Article

Former Commissioner Günther Oettinger's post term of office professional activity as member of the Global Advisory Board of Kekst CNC is compatible with Article 245(2) of the Treaty on the Functioning of the European Union, subject to the respect of the general obligations which apply to the former Members of the Commission and, in particular, subject to the following conditions and restrictions:

- In line with Article 11(1), in conjunction with Article 5, of the Code of Conduct for the Members of the Commission, Former Commissioner Oettinger remains bound by the duties of collegiality and discretion with respect to the Commission's decisions and activities during his term of office. He shall refrain from disclosing what was said at meetings of the Commission and calling into question decisions taken by the Commission during his mandates as Member of the Commission. In addition, Former Commissioner Oettinger shall apply, in general, a high sense of discretion with regard to the use of information and insights that he obtained in the performance of his duties, be it with regard to the functioning of the Commission or the Commission's relations with other institutions, Member States, third countries or third parties, and shall not provide the benefit of any insights of a confidential or sensitive nature in policy, strategy or internal processes that he obtained during his terms of office, to Kekst CNC;
- In accordance with Article 339 of the Treaty on the Functioning of the European Union, Former Commissioner Oettinger shall refrain from participating in any activity or decision-making procedure within Kekst CNC which might involve using information of the kind covered by the obligation of professional secrecy regarding, in particular, undertakings, their business relations or their cost components;
- In accordance with Article 11(4) of the Code of Conduct for the Members of the Commission, during a period of two years following his term of office, Former Commissioner Oettinger shall refrain from lobbying the Members of the Commission or Commission staff, on behalf of Kekst CNC, on matters for which he was responsible during his mandate. During the same period, Former Commissioner Oettinger shall not provide any advice on how Kekst CNC or its clients could directly or indirectly lobby the European Commission, even on matters for which he was not responsible in his former portfolios;
- In accordance with Article 13(2) of the Code of Conduct for the Members of the Commission, Former Commissioner Oettinger shall inform the President of the Commission in case of doubt about the compliance with the Code of Conduct for the Members of the Commission, in a timely manner and before acting on the matter relating to which the doubt arises.

Done at Brussels, on 11 November 2020.

The President
Ursula von der Leyen