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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 Advisory Council ('Beirat') of Deloitte Deutschland GmbH**

## DECISION OF THE EUROPEAN COMMISSION

### on Former Commissioner Günther Oettinger's post term of office professional activity as member of the Advisory Council (*'Beirat'*) of Deloitte Deutschland GmbH

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 5 March 2020, Former Commissioner Günther Oettinger informed the Commission about his intention to engage in a post term of office activity as member of the Advisory Council (*'Beirat'*) of Deloitte Deutschland GmbH.
- 5) A preliminary assessment of the notification concluded that Deloitte as a global company is an important economic operator in the field of audit, consulting, financial advisory, risk advisory, tax and legal services. Mr Oettinger's responsibilities as member of Deloitte Deutschland's Advisory Council might therefore entail advice on Deloitte's overall strategy in Germany, regardless of the economic sectors in which its clients operate. In view of Deloitte's position in its domain as one of the so-called 'big four' professional services networks, in conjunction with the large scope of Mr Oettinger's former Commission portfolios, possible links with Mr Oettinger's former portfolios could not be ruled out.
- 6) Against this background, on 6 May 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.
- 7) The Committee wrote to the Commission on 3 July 2020, requesting additional information from Mr Oettinger on a certain number of points. Mr Oettinger replied on 17 July 2020.
- 8) The Committee subsequently delivered its opinion on 21 July 2020. The Committee examined the nature of Deloitte Deutschland GmbH in the overall context of Deloitte Global. It subsequently examined the organisation of Deloitte Deutschland GmbH, Former Commissioner Oettinger's envisaged position with Deloitte Deutschland GmbH and the links between Deloitte Deutschland GmbH and Deloitte more generally with the Commission.
- 9) The Committee quoted the information made publicly available by Deloitte, which presents it as a global company providing services in the fields of audit and assurance, consulting, financial advisory, risk advisory, tax, legal and other related services. Deloitte employs around 310 000 people in 150 countries and territories. Its headquarters are located in London. The Committee underlined that Deloitte is one of the four major global networks for professional services.
- 10) The Committee furthermore established, based on this information, that Deloitte comprises Deloitte Touche Tohmatsu Limited (Deloitte Global), a UK private company limited by guarantee, Deloitte member firms and their related entities in more than 150 countries and territories. It has governance and management structures at both the global and member firm levels. Deloitte Global itself does not provide services to clients. Deloitte member firm partners are generally the sole owners of their respective firms. The member firms are primarily organised on an individual country or regional basis, and each firm operates within the legal and regulatory

framework of its particular jurisdiction. They are separate and independent firms that come together under a common brand, shared methodologies, standards, protocols and guidelines. The member firm structure reflects the fact that the member firms are not subsidiaries or branch offices of a global parent, but separate and distinct legal entities.

- 11) One of those entities is the German Deloitte Group. According to its Annual Report 2018/2019, the group is composed of ‘Deloitte Deutschland GmbH Wirtschaftsprüfung’ and its subsidiaries as well as ‘Deloitte Legal, Rechtsanwaltsgesellschaft GmbH’. Deloitte Deutschland GmbH provides services in the areas of auditing, risk advisory, tax advice, financial advisory and consulting for companies and institutions from all sectors of the economy. Legal advice is provided by Deloitte Legal.
- 12) As concerns the organisation of Deloitte Deutschland GmbH, the Committee noted that the Group is managed by a Chief Executive Officer who chairs the company’s Executive Committee. The Committee is responsible for the strategic and operational management of Deloitte Deutschland. The management is supervised by a Supervisory Board.
- 13) The Advisory Council is not part of the formal governance structure of the company. Its role is to support the management in identifying future challenges, in finding adequate and strategic solutions, in developing the business model of Deloitte and in optimising the company’s presentation on the market. The membership of the Advisory Council includes former office holders in public institutions and companies.
- 14) The Committee noted that Former Commissioner Oettinger’s notified activity as member of the Advisory Council of Deloitte Deutschland GmbH would involve his participation in around four meetings per year, knowing that Mr Oettinger would receive a compensation for his participation in those meetings.
- 15) The Committee noted that Former Commissioner Oettinger met Deloitte Deutschland GmbH twice in January and April 2016 in his capacity as Member of the Commission in charge of Digital Economy and Society in order to discuss issues related to the Digital Single Market.
- 16) The company declared in its entry in the Transparency Register of 13 January 2020 that it had not received any funding from the EU institutions during the last closed financial year. According to the information publicly available from the Commission’s Financial Transparency Register, it received a small amount in 2017 for participation in an expert group of the Directorate-General for Taxation and Customs Union.
- 17) Deloitte member firms in other countries, notably in Belgium, had or have substantial business relations with the Commission, in various policy fields and with various Commission services. In 2018, the last full year covered by Commissioner Oettinger’s mandate, the total value of Commission commitments towards Deloitte member firms

amounted to €27 million of which approximately €4 million fell under the responsibility of Commission services under the political authority of Commissioner Oettinger. The commitments of the Commission in relation to the three other major global networks for professional services are of similar levels (according to the Commission's Financial Transparency System, commitments in 2018 in relation to the three other major global professional services networks amounted to respectively €46 million, €35 million and €25 million).

- 18) In his reply of 17 July 2020 to the Secretary-General of the Commission, Former Commissioner Oettinger assured the Commission that during his term of office, he had not been involved in any activity, neither directly nor indirectly, which might have concerned any legal relationship between Deloitte and the European Commission. He underlined, in particular, that he had not been involved in any manner, neither directly nor indirectly, in the preparation of possible financial commitments of the Commission towards Deloitte.
- 19) On this basis, the Committee assessed the compatibility of Former Commissioner Oettinger's envisaged position against the framework of the applicable legal context.
- 20) 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.
- 21) More precisely on Former Commissioner Oettinger's envisaged activity, the Committee noted first that the role of the Advisory Council of Deloitte Deutschland GmbH consists of supporting the management of Deloitte Deutschland GmbH with regard to strategic issues. The Advisory Council and its members are not involved in the actual operations and day-to-day management of the company, but provide rather high-level advice and serve, according to information by the company, as a think tank. The Committee noted that the actual duties linked to the membership in the Advisory Council seemed to be moderate given the usually limited number of meetings of the Council per year.
- 22) As regards financial commitments of the Commission in previous years towards Deloitte Deutschland GmbH, which is the entity for which Mr Oettinger intends to perform the activity, the Committee considered that these were negligible and did not fall under the responsibility of the services under the political authority of Former Commissioner Oettinger.
- 23) The Committee noted that commitments of the Commission towards Deloitte member firms in other countries than Germany, notably in Belgium, were however significant. This included commitments made by services, which fell within the portfolio responsibility of Former Commissioner Oettinger during his term of office. In this

context, the Committee examined whether Former Commissioner Oettinger's envisaged activity for Deloitte Deutschland GmbH could create retroactively doubts with regard to the independent and impartial handling, by the Commission and its services, of the files and procedures, which resulted in those commitments towards Deloitte member firms other than Deloitte Deutschland GmbH.

- 24) In this regard, the Committee took note of the fact that the member firms of Deloitte Global are formally separate and distinct legal entities with their proper management and decision-making structures.
- 25) The Committee also noted that the amounts awarded to Deloitte member firms in general had to be put in perspective with regard to other commitments signed by the Commission in the area of professional services. In this regard, the committed amounts were not significantly different compared to commitments towards other major companies in this business sector, and often lower.
- 26) The Committee noted furthermore that financial commitments of the Commission, like decisions to award a contract, are normally the result of competitive procedures managed and decided at the different decentralised management levels of the Commission departments. The Committee's considerations with regard to this matter were accompanied by references to the relevant rules as explained in the Commission's Communication on Governance in the European Commission - C(2020) 4240 final of 24 June 2020<sup>1</sup>.
- 27) The Committee took note of Former Commissioner Oettinger's general assurance provided on 17 July 2020 that he had neither been involved in any activity, neither directly nor indirectly, which might have concerned any legal relationship between Deloitte and the European Commission, nor in any manner, neither directly nor indirectly, in the preparation of possible financial commitments of the Commission towards Deloitte. The Committee underlined that Mr Oettinger's assurance on this matter had been instrumental for its opinion.
- 28) The Committee also took note of Former Commissioner Oettinger's statement that "upon thorough and objective consideration, no risk and no conflict of interest is perceptible in view of my activity for the Advisory Council of Deloitte". For the Committee, this seemed to imply that there was no link between Mr Oettinger's meetings with Deloitte Deutschland GmbH in 2016 and the notified post term of office activity as member of the Advisory Council of Deloitte Deutschland GmbH.
- 29) The Committee regretted nonetheless in this regard that Former Commissioner Oettinger's statement did not contain any specific considerations in relation to the fact that services under his political authority had made financial commitments towards Deloitte Global's member firms other than Deloitte Germany - even if he himself had

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<sup>1</sup> [https://ec.europa.eu/info/sites/info/files/c\\_2020\\_4240\\_en.pdf](https://ec.europa.eu/info/sites/info/files/c_2020_4240_en.pdf)

not been involved in these commitments -, in relation to his meetings with Deloitte Deutschland GmbH in 2016 and in relation to the political advisability to engage in the present activity shortly after leaving office.

- 30) Taking into account the different elements set out above, notably the limited character of the envisaged activity and Former Commissioner Oettinger's assurances provided on 17 July 2020, the Committee did not consider that there is such a close link between the envisaged activity and Mr Oettinger's previous activities that could create retroactively doubts with regard to the independent and impartial handling of those commitments by the responsible Commission departments under the Former Commissioner's responsibility. The Committee considered therefore that there were not sufficient grounds to conclude that the activity as member of the Advisory Council of Deloitte Deutschland GmbH envisaged by Mr Oettinger would be incompatible with Article 245 of the Treaty on the Functioning of the European Union.
- 31) The Committee considered nonetheless that the Commission's decision should recall and explicitly spell out a number of restrictions in order to ensure the compatibility of the activity with the obligations applying after the end of the mandate.
- 32) While the membership in an Advisory Council does usually 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. It should explicitly mention that Former Commissioner Oettinger should not provide any advice to Deloitte Deutschland GmbH on issues related to direct or indirect lobbying of the Commission by Deloitte, even on matters for which Former Commissioner Oettinger was not responsible in his former portfolios.
- 33) Moreover, the Committee considered that the Commission decision should recall that Former Commissioner Oettinger must strictly respect Article 339 Treaty on the Functioning of the European Union.
- 34) The Committee furthermore noted that the decision should also clarify that Former Commissioner Oettinger remains bound by the duties of collegiality and discretion, as laid down in Article 5 of the Code of Conduct, with respect to the Commission's decisions and activities during his terms of office. Consequently, he must not disclose anything, which was said at meetings of the Commission, or call into question decisions taken by the Commission during these periods.
- 35) The decision should underline that Former Commissioner Oettinger must show, 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. He should 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 Deloitte Deutschland GmbH.

- 36) Finally, the Committee considered that the Commission decision should recall that former Members of the Commission must, if they have doubts with regard to the application of the Code, ‘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.
- 37) Based on the above-mentioned considerations, the Committee concluded that the envisaged activity would be compatible with Article 245 TFEU on the condition that the above-mentioned conditions are set out explicitly in the Commission decision.
- 38) 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 Advisory Council (*‘Beirat’*) of Deloitte Deutschland GmbH is compatible with Article 245(2) of the Treaty on the Functioning of the European Union, subject to the respect, by Mr Oettinger, 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. This includes notably refraining 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 must show, 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. He should 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 Deloitte Deutschland GmbH;
- 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 Deloitte Deutschland GmbH, on matters for which he was responsible during his mandate. The respect of Article 11(4) of the Code of Conduct also implies that Former Commissioner Oettinger shall not provide any

advice to Deloitte Deutschland GmbH on how to directly or indirectly lobby the European Commission;

- 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 Deloitte Deutschland GmbH 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 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 28 October 2020.

*The President*  
*Ursula von der Leyen*