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**DECISION OF THE EUROPEAN COMMISSION**

**on Former Commissioner Günther Oettinger's post term of office professional activity  
as Chairman of the Advisory Board of Donner und Reuschel AG**

## DECISION OF THE EUROPEAN COMMISSION

### on Former Commissioner Günther Oettinger's post term of office professional activity as Chairman of the Advisory Board of Donner und Reuschel AG

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 foreseen in Article 11(3), second subparagraph.
- 4) On 12 November 2020, Former Commissioner Günther Oettinger informed the Commission about his intention to engage in a post term-of-office activity as Chairman of the Advisory Board of Donner und Reuschel AG.
- 5) Donner und Reuschel is a German bank organised as a limited company ('Aktiengesellschaft'), which has its headquarters in Hamburg. According to public information, the Bank specialises in private banking, has appr. 500 employees in

Hamburg, Munich and other offices and has a subsidiary in Luxemburg. Given the broad scope of economic and financial interests of companies in the financial sector, the President of the Commission considered that the activities of former Commissioners in this sector should be carefully assessed with regard to the principles of integrity and discretion established by Article 245 of the Treaty on the Functioning of the European Union. Against this background, and in line with Article 11(3) of the Code of Conduct for the Members of the Commission, the Independent Ethical Committee was consulted, on 23 November 2020, to provide an opinion on the compatibility of Mr Oettinger's envisaged activity with Article 245 of the Treaty on the Functioning of the European Union.

- 6) The Committee delivered its opinion on 16 December 2020. The Committee examined successively the nature of the activities of Donner und Reuschel, including its link with the Signal Iduna Group, its organisational structure, the scope of Former Commissioner Oettinger's envisaged position and possible links between Donner und Reuschel and the Commission.
- 7) The Committee examined the activities of Donner und Reuschel AG on the basis of the public information available as follows. Donner und Reuschel is a German private bank founded in 1798, with offices in Hamburg, Munich, Kiel, Frankfurt and Düsseldorf and a subsidiary in Luxembourg. The Bank's stated goal is to 'give private customers access to selected expert networks and to the best possible solutions available on the market'. According to its website, Donner und Reuschel's activities encompass a wide range of financial services, such as advice on asset management, real estate projects as well as financial planning and, more recently, a personal contact support to each of its clients.
- 8) The Bank provides its services to private customers, entrepreneurs, asset managers, real estate clients as well as institutional investors and other private entities. Donner und Reuschel offers the following financial services: (i) to private customers, it offers advice on asset management, financial planning, financing and real estate; (ii) to entrepreneurs, the Bank gives advice on asset management (digital and classic), structuring custody accounts and investments, corporate finance, real estate, financial planning, management of risk and pensions and currency management; (iii) to real estate clients, Donner und Reuschel advises on financing of real estate and related investments, financing concepts for real estate, project financing as well as purchase financing; (iv) to institutional investors, the Bank offers advice on capital investments, based on the current market opportunities and challenges in the industry, project-development of asset management, risk management and risk control, brokerage and on tenders related to capital investments.
- 9) Since 1990, Donner und Reuschel is part of the Signal Iduna Group, a large German insurance and financial services group. According to the Bank's website, the Group's income from insurance fees is 5.9bn EUR, which makes it one of the big German insurance groups. The group offers pensions and financial products, and has around 10,000 employees.
- 10) Based on information available on Donner und Reuschel's website, the Committee noted that its governance structure consists of a Management Board, a Supervisory Board and an Internal Audit Department. In addition, an Advisory Board assists the Bank's management team. The Management Board is composed of two persons, one

of whom is the spokesman for the Management Board. The Supervisory Board is composed of nine members. The Chairman and the deputy Chairman of the Supervisory Board are, in addition to those functions, both members of the board of Signal Iduna Group.

- 11) As regards Donner und Reuschel's Advisory Board, the Bank's website mentions that it is composed of a Chairman and twenty-two members. According to the information provided by Former Commissioner Oettinger and the information on the bank's website, the Board is composed of 'economic and public figures' and its role is to advise 'management in the performance of their duties on economic matters and to promote the business success of the bank' as well as 'publicise the name Donner und Reuschel and its products and services'.
- 12) As concerns Former Commissioner Oettinger's envisaged function, the Committee noted that, as Chairman of the Advisory Board, Mr Oettinger would be in charge of, amongst others, calling its meetings, following the Management Board's request. In his position, Mr Oettinger would be obliged to respect the obligation of 'banking secrecy' and would have to respect the confidentiality of sensitive information obtained in his capacity as Chairman of the Advisory Board.
- 13) Regarding possible links with the Commission, the Committee noted that, according to the Financial Transparency System of the European Commission, neither Donner und Reuschel AG nor the Signal Iduna Group receive funds from the Commission. The Bank's income results from its commercial activity. The Committee furthermore noted that neither Donner und Reuschel nor the Signal Iduna Group are registered in the Joint Transparency Register of the European Commission and the Parliament.
- 14) On this basis, the Committee assessed the compatibility of the envisaged activity against the framework of the applicable legal context.
- 15) First, and in line with previous opinions, the Committee noted that the 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, yet knowing that 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.
- 16) Concerning Mr Oettinger's envisaged activity, the Committee underlined the scope of the activity, and more precisely the responsibilities as Chairman of the Advisory Board of Donner and Reuschel. The Committee noted that the Former Commissioner's expected tasks are, as such, not directly related to his former Commission portfolios and will normally not require any interaction with the Commission. The Committee noted, however, the risk that specific information or insights that Mr Oettinger might have obtained during his two terms of office would be relevant for business decisions of the Bank, on which the Advisory Board would have to take a position or provide advice. This could concern information obtained in areas falling within his previous portfolios in the Commission or in other areas in which he was involved via his collegial responsibilities as a Member of the Commission.
- 17) The Committee deemed it essential that the Commission's decision underlines 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.

- 18) The Committee also considered that the Commission's decision should explicitly insist 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 Oettinger's terms 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.
- 19) The Committee furthermore underlined that the Commission's decision should recall explicitly the provision 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 Oettinger was involved at College level, even if he was not directly responsible for them through his portfolio responsibilities.
- 20) The Committee recommended that the Commission should recall that, according to Article 13(2) of the Code of Conduct for the Members of the Commission, 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.
- 21) Finally, the Committee noted that both Former Commissioner Oettinger and Donner und Reuschel should be fully aware of Former Commissioner Oettinger's obligations which continue to apply after his term of office. As in a previous situation, the Committee therefore recommended that the Commission's decision should include a condition that Commissioner Oettinger shares a copy of the Commission Decision with Donner und Reuschel and confirms this to the Commission. This would ensure full transparency of the applicable obligations, conditions and restrictions 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 Bank.
- 22) The Committee concluded that Former Commissioner Oettinger's envisaged activity as member of the Advisory Board of 'Donner und Reuschel AG would be compatible with Article 245 of the Treaty on the Functioning of the European Union, on the condition that the above-mentioned obligations, conditions and restrictions are explicitly and in full set out in the Commission decision and brought to the attention of Donner und Reuschel AG by Former Commissioner Oettinger.
- 23) The Commission has considered the Independent Ethical Committee's opinion and shares its conclusions.

HAS DECIDED AS FOLLOWS:

*Sole Article*

Former Commissioner Günther Oettinger's envisaged activity as Chairman of the Advisory Board of Donner und Reuschel is compatible with Article 245(2) of the Treaty on the Functioning of the European Union, subject to the following conditions:

- In accordance with Article 339 of the Treaty on the Functioning of the European Union, Former Commissioner Oettinger shall refrain from participating in any deliberation within the Advisory Board of Donner und Reuschel AG which might involve disclosing and/or using information of the kind covered by the obligation of professional secrecy that he obtained as Member of the Commission, in particular, information about undertakings, their business relations or their cost components;
- In line with Article 11(1) of the Code of Conduct for the Members of the Commission, in conjunction with Article 5 of the Code, Former Commissioner Oettinger remains bound by the duties of collegiality and discretion, with respect to the Commission's decisions and activities during his terms of office. He shall not disclose what was said at meetings of the Commission and shall apply a high sense of discretion with regard to the use of information and insights that he obtained in relation to his former portfolios on Energy, on Digital Economy and Society and on Budget and Human Resources, or in general in relation to the performance of his duties as Member of the Commission;
- In accordance with Article 11(4) of the Code of Conduct for the Members of the Commission, Former Commissioner Oettinger shall refrain from lobbying the Commission on behalf of Donner und Reuschel AG for a period of two years after ceasing to hold office not only on matters for which he was responsible within his successive Commission portfolios on Energy, on Digital Economy and Society and on Budget and Human Resources, but also on all matters in which he has been involved at College level, even if he was not directly responsible for them from a portfolio angle;
- In line 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 a timely manner, if and when he has a doubt with regard to the application of the present Decision or to his obligations deriving from the Treaty on the Functioning of the European Union and the Code of Conduct for the Members of the Commission before acting on the matter in relation to which the doubt arises;
- Former Commissioner Oettinger shall share a copy of the present Decision with Donner und Reuschel AG and inform the Secretary-General of the Commission thereof.

Done at Brussels, on 3 February 2021.

*The President*  
*Ursula von der Leyen*