



Brussels, 30.9.2020
C(2020) 9038 final

DECISION OF THE EUROPEAN COMMISSION

**on Former Commissioner Vytenis Andriukaitis' post term of office professional activity
as member of the Governance Board of the 'TuBerculosis Vaccine Initiative' (TBVI)**

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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 foreseen in paragraph 3, second subparagraph, litt. (a) to (f).
- 4) On 1 July 2020, Former Commissioner Vytenis Andriukaitis notified to the Commission his envisaged post term of office activity as member of the Governance Board of the 'TuBerculosis Vaccine Initiative' (hereafter: TBVI).

- 5) The envisaged activity is related to the Former Commissioner's portfolio on Health and Food Safety. On 7 July 2020, the Commission requested the opinion of the Independent Ethical Committee on the compatibility of the notified activity with Article 245 of the Treaty on the Functioning of the European Union. The Committee delivered its opinion on 17 July 2020. The Committee was composed of two members given that the third member recused herself from the file for the reasons mentioned in the opinion.
- 6) The Committee examined the nature of TBVI, its organisation, its funding, Former Commissioner Andriukaitis' expected position within TBVI and the links of TBVI with the European Commission.
- 7) The Committee established that TBVI is a not-for-profit organisation, founded in 2008 in the Netherlands, whose registered office is located in Lelystad. Its statutes indicate that it is a foundation and that it "serves the general interest".
- 8) TBVI is a "Research and Innovation partnership that works to discover and develop new, safe and effective tuberculosis vaccines that are accessible and affordable for all people". According to TBVI's website, the organisation is a consortium of experts and stakeholders created to facilitate the discovery and development of vaccines against tuberculosis, but it is neither a vaccine producer, nor a laboratory or a pharmaceutical company.
- 9) The goals of the organisation, as stated in its statutes, are fourfold; first, TBVI aims to support and promote the European efforts in the field of tuberculosis vaccines development, focusing primarily on the development of new vaccines and the mobilisation of funding and investment; second, TBVI aims to bring together European efforts in the field of tuberculosis research with other European and global initiatives; third, TBVI wants to "form contacts with the private industry to facilitate developments in aforesaid field"; and fourth, TBVI performs any other work related to the above.
- 10) In order to achieve its stated goals, TBVI focuses on three main activities, which are product development of vaccines and biomarkers, collaborative research and innovation, and the "global and European cooperation and coordination of tuberculosis vaccine research".
- 11) More specifically, TBVI supports collaborative research and innovation by bringing together a consortium that includes more than 50 partners from academia, research institutes, government institutes, and biotech and vaccine companies. The organisation describes itself as "an honest broker", whose activities are (1) to provide services and technical advice for product development, (2) to perform project identification, (3) to ensure development and management of the consortium and (4) to mobilise resources and funding.
- 12) Finally, the organisation also works through the Global Tuberculosis Vaccine Partnership (GTBVP), a "leadership working group" which aims to develop further tuberculosis vaccines and sets global working standards followed by TBVI.

- 13) As concerns the organisation of TBVI, the Committee noted that, according to its statutes, TBVI is composed of four governing bodies, which are the Governance Board, the Executive Director of TBVI, the Advisory Committee and the company office. The Board of TBVI is in charge of the management of the foundation, including keeping a record of its assets. The Board also represents the foundation and can perform legal acts. The Executive Director, appointed by the Board, is entrusted with the day-to-day management of the activities of TBVI and is responsible for the implementation of the Board's resolutions. The Executive Director decides on the allocation of funding. The Advisory Committee is responsible for advising the Board in relation to the strategy and the policy of the foundation, as well as advising the Executive Director in relation to research and mobilisation of funds. Finally, the company office, which is composed of legal, business and financial experts, is responsible for communication, finance, administration, legal advice and assistance to the other three bodies.
- 14) On the funding of TBVI, and according to the legal statutes, the Committee established that its financial resources consist on income and revenue from the activities and the property belonging to the foundation, as well as contributions from the foundation's donors. TBVI also receives subsidies and private contributions. According to their financial statement, TBVI received 46.5 million EUR over the past seven years. This document also mentions that the European Commission is their biggest donor, reaching almost 82% of the funds received between 2010 and 2017. The Committee underlined that TBVI does not have commercial interests, since the ownership of vaccine candidates and any intellectual property rights remain with researchers and vaccine developers.
- 15) The Committee noted that Former Commissioner Andriukaitis had informed the Commission about his intention to engage in a post-term of office activity as Member of the Governance Board of the TuBerculosis Vaccine Initiative. In this position, Mr Andriukaitis would be one of the nine members of the Board and would be expected to attend meetings, ensure management of the foundation and represent it externally. According to the information that Mr Andriukaitis provided to the Commission, he will not receive a remuneration or fees for his activity, but only the reimbursement of travel expenses.
- 16) The Committee assessed carefully the links between TBVI and the Commission. The Committee noted that the launch of TBVI in 2008 was supported and part-funded by the Commission through the project "Establishment, strategy and initial activities of the tuberculosis vaccine initiative: coordination of European efforts with global research initiatives" under the EU's Seventh Framework Programme for Research and Technological Development. The Committee noted that information publicly available on the Commission website indicates that TBVI initially received funding from the European Union between May 2008 and April 2010 in order to launch its first activities and establish a common global research strategy.

- 17) TBVI subsequently also received support under the EU's Horizon2020 programme for research and innovation, notably the project "TBVAC 2020 - Advancing novel and promising TB vaccine candidates from discovery to preclinical and early clinical development" for which the responsible Commission department is the Directorate-General for Research and Innovation, according to information published on the Financial Transparency System of the European Commission.
- 18) TBVI is registered in the Joint Transparency Register of the European Parliament and the Commission. According to the Register, TBVI met with Mr Andriukaitis on 18 September 2019 in Brussels, to discuss tuberculosis policies and the UN high level meeting on tuberculosis. TBVI also met with the then Commissioner Moedas in 2015 and the Director-General of DG Research and Innovation in 2016, to present their activities and discuss vaccine research initiatives.
- 19) The Committee also noted that Former Commissioner Andriukaitis made a speech in 2017, declaring that the European Commission would continue to invest in global funds aiming at preventing and treating tuberculosis and other illnesses, especially through vaccination.
- 20) The Committee noted eventually that TBVI's activities and tuberculosis vaccine global research have been supported by the European Parliament in a resolution of 3 February 2011 "on the Tuberculosis Vaccine Initiative (TBVI) – practical implementation of the Europe 2020 strategy with a view to meeting MDG 6 and eliminating tuberculosis by 2050".
- 21) On the basis of the facts established, the Committee assessed the compatibility of Former Commissioner Andriukaitis' envisaged activity against the framework of the applicable legal context.
- 22) First, and in line with previous opinions, the Committee recalled that former 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 of the Treaty on the Functioning of the European Union and in the Code of Conduct for the Members of the European Commission.
- 23) On the specific activity envisaged by Former Commissioner Andriukaitis, the Committee underlined that, notwithstanding its direct link with the Former Commissioner's portfolio, the activity was fully in line with the European Commission's objectives and its official vaccine policy. The Committee noted in particular that it would be an activity without remuneration except for reimbursement of expenses.
- 24) The Committee underlined that, as a Member of the Board of TBVI, Former Commissioner Andriukaitis would be expected to attend meetings, contribute to the management of the organisation and act as one of its representatives. The Committee underlined that Mr Andriukaitis' activity could be linked to the

acquisition or distribution of funds, which was of particular relevance given that TBVI was also funded by European Union funds.

- 25) In line with its findings, the Committee considered that a number of restrictions should be either recalled or set out explicitly in the Commission decision in order to ensure the compatibility of the activity with the obligations applying after the end of the mandate. This should apply, in particular to future decisions of the Commission on the allocation of European Union funds to TBVI.
- 26) The Committee recommended that the Commission recalls in its decision the general prohibition of Article 11(4) of the Code of Conduct to lobby Members of the Commission or their staff on behalf of TBVI, on matters for which the Commissioner was responsible, for a period of two years after ceasing to hold office.
- 27) The Committee furthermore recommended that the Commission decision stressed 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. It noted that in case an activity of the Board of TBVI should be related to such protected information and the Commissioner be involved in this activity, he should recuse himself from this decision. This concerns in particular any activity that would be related to the management or acquisition of European Union funds for TBVI.
- 28) The Committee underlined finally that the Commission decision should also recall 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 Andriukaitis's term of office. This included 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 Andriukaitis had obtained during his mandate, be it within his portfolio responsibilities or within the College.
- 29) Under these conditions, the Committee considered that the envisaged activity would be compatible with Article 245 of the Treaty on the Functioning of the European Union.
- 30) The Commission has considered the Independent Ethical Committee's opinion and shares its conclusions.

HAS DECIDED AS FOLLOWS:

Article 1

Former Commissioner Vytenis Andriukaitis' envisaged activity as member of the Governance Board of the 'TuBerculosis Vaccine Initiative' is compatible with Article 245(2) of the Treaty on the Functioning of the European Union, subject to the respect, by Mr Andriukaitis, 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 Andriukaitis 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 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 he has obtained during his mandate, be it within his portfolio responsibilities or within the College;
- 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 Andriukaitis shall refrain from lobbying the Members of the Commission or Commission staff on behalf of the 'TuBerculosis Vaccine Initiative' on matters for which he was responsible during his mandate and in particular in relation to any possible activity of the 'TuBerculosis Vaccine Initiative' with regard to the management of EU funding or the acquisition of such funding;
- In accordance with Article 339 of the Treaty on the Functioning of the European Union, Former Commissioner Andriukaitis shall refrain from participating in any activity or decision-making procedure within the 'TuBerculosis Vaccine Initiative' 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.

Done at Brussels, on 30 September 2020.

The President
Ursula von der Leyen