

Opinion
of the
Independent Ethical Committee
established
by the European Commission
2 July 2021

Subject: Request for an opinion on former Commissioner Cecilia Malmström's post-term of office activity as regards her activity for the 'Peterson Institute for International Economics'

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 23 June 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 Cecilia Malmström's post-term of office activity as regards her activity for the 'Peterson Institute for International Economics', in order to ensure compliance with Article 245 of the Treaty on the Functioning of the European Union.

Facts

General information

2. On 14 June 2021, former Commissioner Malmström notified the Commission about her decision to engage in a post-term of office activity as a non-resident senior fellow at the 'Peterson Institute for International Economics'.
3. On 23 June 2021, Ms Malmström provided the Commission with additional information. She informed about her intention to host 'Trade Winds', a virtual 'seminar where people are invited to discuss trade related matters'. She mentioned that she would host the event once a month.
4. The 'Peterson Institute for International Economics' is a non-profit American think-tank based in Washington and founded in 1981 as the 'Institute for International

Economics'. In 2006, it was renamed the 'Peterson Institute for International Economics' in honour of its founding chairman, Peter G. Peterson.

5. The 'Peterson Institute for International Economics' conducts research on a wide range of topics related to the United States' economy and international economics, notably in the fields of 'international trade and investment, international finance and exchange rates, macroeconomic policy and crisis response, globalization and human welfare'.
6. The research outcomes are made publicly available in the form of books, policy recommendations, working papers as well as articles. The think-tank also holds regular online events gathering international experts, policy-makers and academics.
7. According to the information published on the 'Peterson Institute for International Economics' website, its audience includes 'government officials and legislators, business and labour leaders, management and staff at international organizations, university-based scholars and their students, experts at other research institutions and nongovernmental organizations, the media, and the public at large'.
8. Based on the information publicly available, the organisation's 2020 annual budget was of USD 13 000 000, 'funded by donations and grants from corporations, individuals, private foundations, and public institutions, as well as income on the Institute's endowment'.
9. The governance structure of the 'Peterson Institute for International Economics' includes a President, the latter being responsible for the daily running of the Institute, a Board of Directors and an Executive Committee of the Board of Directors. The Board of Directors is composed of 45 members whose function is to protect the independence and the 'intellectually rigorous policy research' of the Institute, as well as to ensure its contribution to public policies in various fields of expertise. Finally, the Executive Committee, composed of 12 members who also sit in the Board of Directors, oversees the organisation's budget and management.

Funding

10. According to the Financial Transparency System of the European Commission, the 'Peterson Institute for International Economics' received EU funds directly administered by the Commission departments, its staff in the EU delegations, through executive agencies or of the European Development Fund.
11. In 2016, the 'Peterson Institute for International Economics' was the beneficiary of a grant from the Directorate-General for Economic and Financial Affairs (ECFIN). It aimed at financing a 'Study on lessons from the United States on the Functioning of the European Economic and monetary Union (EMU)'.

Links of the ‘Peterson Institute for International Economics’ with the European Commission

12. The ‘Peterson Institute for International Economics’ is registered in the mandatory transparency register of the European Parliament, the Council of the European Union and the European Commission.
13. Since 6 December 2018, date of registration of the Institute in the transparency register, 10 meetings were held with Members of the Commission, members of cabinets or Directors-General. 2 of these meetings were trade-related and held with the Director-General for Trade respectively on 15 January 2021 and on 3 February 2021. The latter took place when Ms Malmström was no longer carrying out her mandate as Commissioner for Trade.
14. Furthermore, neither former Commissioner Malmström nor any member of her cabinet met with any representatives of ‘the Peterson Institute for International Economics’ while she was in office.

Former Commissioner Malmström’s position

15. Former Commissioner Malmström envisaged activity with the ‘Peterson Institute for International Economics’ consists of serving as a non-resident senior fellow, being involved in the academic activities of the think-tank.
16. According to the information publicly available on its website, the ‘Peterson Institute for International Economics’ counts non-resident senior fellows, senior fellows and research fellows, participating in the Institute’s activities and selected for their ‘expertise to bear on a vast and diverse range of topics and regions’.
17. According to the information provided by former Commissioner Malmström, she will be ‘based in Sweden’ and her activities will involve ‘some podcasts, seminars’ and ‘some research’. More precisely, Ms Malmström informed that she will host the virtual event ‘Trade Winds’ once a month. The event aims at debating ‘the future of global commerce in the era of the COVID-19 pandemic, including ways that international cooperation on trade can accelerate the recovery’. She will be ‘leading it, asking questions to invited guests from business, academia, institutions, politics, etc’.

Legal context

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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

24. 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 for the Members of the European Commission, which develops these obligations in more detail.
25. Former Commissioner Malmström accepted a position of non-resident senior fellow at the ‘Peterson Institute for International Economics’. This organisation is a non-profit think-tank based in Washington, United States. As a non-resident senior fellow, Ms Malmström will notably be hosting a virtual event ‘Trade Winds’ once a month. She will be involved in debates with experts whose task is to address questions such as international cooperation on trade, post Covid-19 recovery or the future of global commerce in times of crisis.
26. Former Commissioner Malmström will be engaged in discussions in relation to trade and economics understood in the broadest sense. Therefore, the Committee notes that Ms Malmström’s activity as host of ‘Trade Winds’ is linked to her former Commissioner for Trade’s portfolio.
27. However, Ms Malmström would only host the virtual event on a monthly basis. In addition, the envisaged position is not directly linked to the acquisition or distribution of EU funds and will normally not require any interaction with the European Commission.

28. The Committee does therefore not see any legal or other impediments to accepting an assignment as a non-resident senior fellow at the 'Peterson Institute for International Economics'. Nevertheless, a number of restrictions should be recalled to Ms Malmström in order to avoid this envisaged activity to represent a risk with regard to the interests of the Commission and the European Union. The Commission should ensure the compatibility of the activity with the obligations applying after the end of the mandate and set out explicitly in the Commission decision based on Article 11(3) of the Code of Conduct.
29. The Committee advises the Commission to recall the provisions of Article 11(4) of the Code in its decision. Indeed, this article provides that '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 own portfolio'. The Commission decision should clarify that the term 'lobbying' includes indirect lobbying in the sense of influencing the Commission 'through the use of intermediate vectors such as media, public opinion, conferences or social events, targeting the EU institutions' as set out in paragraph 7 of the Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation and applies independently of the location of the employment. This would also cover any potential activity with a view to obtaining EU funding. The prohibition to lobby does not affect participation in public events or general exchanges of, and on, publicly available information with Members of the Commission or Commission staff.
30. Moreover, there is a risk that specific information or insights that former Commissioner Malmström obtained during her term of office are relevant to the work of the 'Peterson Institute for International Economics'. This can concern information obtained in areas falling within her former portfolio on Trade or in other areas such as commercial and economic related files in which she was involved via her collegial responsibilities in the Commission.
31. As a result, the Commission decision should stress 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. Hence, the Commission decision should clarify that this provision is not limited in time and will apply to Ms Malmström even after the end of the two years period following the end of her mandate at the European Commission.
32. The Commission decision should also underline the importance for former Commissioner Malmström to comply with the duties of collegiality and discretion, as laid down in Article 11(1) and Article 5 of the Code of Conduct, with respect to the Commission's decisions and activities during her 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 Malmström obtained during her mandate, be it within her portfolio responsibilities or within the College. Therefore, Ms Malmström should not exploit any insights of a confidential or sensitive nature in policy, strategy or internal processes that she obtained during her term of office in the framework of her activities at the ‘Peterson Institute for International Economics’.

33. Compliance with this restriction is particularly important concerning information relating to former Commissioner Malmström’s former portfolio on Trade, which may be of interest for the ‘Peterson Institute for International Economics’.
34. The Committee notes that former Commissioner Malmström accepted a post-mandate activity as a non-resident senior fellow at the ‘Peterson Institute for International Economics’ and that this information was publicly available prior to the notification to the Commission. In this regard, the Commission should include a reminder in its decision that in accordance with Article 11(2) of the Code of Conduct, the obligation to notify an engagement in any professional post-mandate activities must take place prior to the start of such activity and with a minimum of two months’ notice.
35. 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.
36. Therefore, based on the above-mentioned information, the Committee concludes that the envisaged activity would be compatible with Article 245 TFEU, subject to the respect of the conditions specified in this opinion.

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